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COMMITTEE ON GENERAL AFFAIRS  
February 7, 2005  
LB 388, 530, 562, 563

The Committee on General Affairs met at 1:30 p.m. on Monday, February 7, 2005, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding the confirmation of a gubernatorial appointment and LB 388, LB 530, LB 562, and LB 563. Senators present: Ray Janssen, Chairperson; Deb Fischer, Vice Chairperson; Matt Connealy; Abbie Cornett; Philip Erdman; Mike Friend; David Landis; and Roger Wehrbein. Senators absent: None.

SENATOR JANSSEN: We are going to hear four...let's see, one, two, three, four bills this afternoon, and I would like to remind you that if you are going to testify, please fill out the forms and place them in the back, and then...they are stationed by both doors, and when you come up you drop those statements in the box on the testifying table. Make sure you do that so that your participation here can be properly recorded. And when you come up, please spell your last name for the record. State who you are, if anyone you represent. You may testify as a proponent or opponent or in a neutral capacity. Please limit your testimony and please do not repeat any testimony that has been offered by the previous witness. I would remind you also that if have any cell phones on or near you, or pagers, either turn them off because if I hear one I might get quite upset. I don't like to hear those things. Put them on buzz or something so they aren't distracting to the committee and to the testifiers. Make sure that you refrain from any conversation while you are sitting out there because that does interfere with the introduction that the people are trying to give. We are missing a few committee members. We have three of them here this afternoon, starting out, but I'm sure the rest of them will be here shortly because they have committee bills in other areas that they may be introducing. To my far left is Senator Abbie Cornett, and Abbie is from Bellevue. To her right is Senator Roger Wehrbein from Plattsmouth, and to my extreme right is the Vice Chair of the committee, Senator Deb Fischer, and she is from Valentine. On my right is committee counsel, Laurie Lage; and to my left is the committee clerk, Brittany Sill; and our page for the day is Brad. My name is Ray Janssen; I am the Chair of the committee and I am from Nickerson, Nebraska. We have some...we're going to start off the day with some

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appointments to the State Electrical Board. Mr. Riley George is not here yet and he will be...we will do that after we have heard the four bills that we'll hear. But we do have Mr. Tom F. Ourada is here. All right, would you come on up, sir, and tell us why you want to represent the State Electrical Board. Senator Friend has joined us, on the end. Senator Friend is from Omaha. Tom, welcome to the General Affairs Committee.

CONFIRMATION HEARING ON  
TOM F. OURADA TO THE  
STATE ELECTRICAL BOARD

TOM OURADA: Good afternoon, Senator and committee members. My name is Tom Ourada; it's O-u-r-a-d-a. I'm the public works director for the city of Crete, Nebraska, and I believe that this is a unique perspective that can be offered to the board since we rely on state inspectors for 100 percent of our electrical activity. And I would like to continue to do so, I guess--represent the board.

SENATOR JANSSEN: All right. Thank you, Tom. Are there any questions? Tom, how long did you say you've been on the board?

TOM OURADA: One year.

SENATOR JANSSEN: You've been there one year.

TOM OURADA: Um-hum.

SENATOR JANSSEN: Okay.

TOM OURADA: I completed a previous appointment for another board member.

SENATOR JANSSEN: I see. Um-hum. Well, I know there are a lot of things that you have to look after. We see a lot of the electrical board members coming in here, and it's part of our general construction throughout the state, so hopefully you are doing the right thing. Keep our insurance rates down. All right. Are there any other questions? Thank you for being here today, Tom.

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TOM OURADA: Thank you.

SENATOR JANSSEN: Senator Connealy has joined us. Senator Connealy is from Decatur, Nebraska. With that, I believe...I see Senator Mines here, will be here to tell us all about LB 388 and tell us why it's a good bill.

LB 388

SENATOR MINES: Thank you, Chairman Janssen, members of the General Affairs Committee. This isn't a good bill; it's a great bill. It's an easy bill to understand. This...LB...first of all, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I'm the primary introducer for LB 388, the wine doggie-bag bill. This idea came to me from a retail liquor establishment, and here's what happens in restaurants throughout Nebraska. If one orders a meal...you go out to dinner with family, friends, and you order a meal, sometimes you may want wine with your meal and sometimes you may order a bottle of wine with that meal. On occasion, hopefully this happens more often than not, those having the meal can't finish that bottle of wine, and here's what happens today. Either you sit around following dinner and finish that bottle of wine, because sometimes it can be a rather expensive bottle--could be \$40, \$50, \$60 a bottle--or you leave the bottle and go home and the restaurant pours it down the drain. What LB 388 proposes and would do would allow restaurants to put the cork back in the bottle of wine, put the bottle of wine into a clear plastic bag that is sealed and cannot be opened and resealed--it's a one-time-only seal--and present those that paid the bill with the receipt that they had dinner, and then you can take that bottle of wine out. In fact, that plastic bag becomes a sealed container. You can take that bag and the receipt out and you can take that home, and then of course if you're stopped by a police officer, you can show him the receipt, the sealed container, and there is no further issue with that. I believe what this does, it encourages responsible drinking in that you don't finish the bottle of wine following dinner. And it leaves to choice whether or not you take that home or you dispose of it. And I think that all parties in this bill should be satisfied. The restaurant owners could potentially sell more. Rather than individual glasses, they could sell a bottle of wine,

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and patrons understand that they don't have to drink the whole bottle of wine. They can take the remainder home. And then those concerned with highway safety, and certainly I am, as well, understand that this is a sealed container and should not be broken and will allow responsible adults to take their bottle home. I'm also going to offer two amendments to this bill. (Exhibits 1 and 2) Hobie Rupe of the Liquor Control Commission pointed out to us that the bill's language would better fit under the retail license section of the Liquor Control Act, and we do agree with that. The second amendment was requested by a vineyard operator, James Arthur Vineyards, and would create the similar exemption with bottles purchased at the farm winery. They, on occasion...not on occasion...frequently will have visitors come to wineries, have snacks and sample wine, and then those that wish to take one bottle home could put the cork back in it and seal it in the bag and take it home with them. So with that, I think this bill is simple to understand, is in the interests of really all concerned. It promotes responsible consumption and I would urge the committee's adoption of LB 388. And I will hand in these amendments, Mr. Chair...

SENATOR JANSSEN: Okay.

SENATOR MINES: ...and entertain any questions you might have.

SENATOR JANSSEN: Any questions? Senator Mines, I...Senator Wehrbein, did you have one?

SENATOR WEHRBEIN: No; no.

SENATOR JANSSEN: Could you explain to me how the bag works? Is it something like a seal, a plastic bag you seal food in, and if you open it, the color changes on that seal?

SENATOR MINES: I neglected...

SENATOR JANSSEN: Could you elaborate on that a little?

SENATOR MINES: Senator Janssen, I neglected to bring...I have samples. And my staff is in another hearing. I will have samples of those bags delivered to you. It seals one time and it's a sticky substance that seals, and then once

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you open it, it cannot be resealed.

SENATOR JANSSEN: Resealed.

SENATOR MINES: Right. And it's a long, clear plastic bag. They are...you can buy them from several different sources and they cost about 17 cents apiece, so it's a reasonably inexpensive alternative, and restaurants could purchase those in volume and then ask patrons if they want to take partial bottles of wine home with them.

SENATOR JANSSEN: I heard you mention the fact that you think that this would probably, or could, stop people from consuming the whole bottle, and therefore running into a little difficulty getting home.

SENATOR MINES: And as a matter of fact, I can say with real truthful honesty that I have done that, as well. I think people tend not to want to throw away part of a good bottle of wine, and this should promote...it will encourage me next time to put it in the bag and take it home rather than sit around and consume it, and it's just more responsible behavior, I believe.

SENATOR JANSSEN: Okay. Any other questions? Seeing none, thank you.

SENATOR MINES: Thank you, Senator.

SENATOR JANSSEN: We'll take the proponents of this bill.

JIM OTTO: Senator Janssen, members of the committee, my name is Jim Otto, O-t-t-o. I am a registered lobbyist for the Nebraska Restaurant Association and I'm here on behalf of the restaurant association today to express our enthusiastic support for LB 388 and to thank Senator Mines for introducing it. I really would probably repeat most of the things Senator Mines said, so in the interest of time I won't do that. I would just...different...Senator Mines does have samples, but I was just going to mention the question you asked, Senator Janssen. The way it's been explained to me as we've talked to different makers of these bags, it could be as simple...if you've ever gone snow skiing and you've tried to move your lift ticket from one coat to another and see how impossible it is without

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just ripping the lift ticket up, it could be that sticky of a material, and so if you actually open it would be obvious that you had ripped it open and you couldn't reseal and it could be something that simple. With that, there are people actually in the industry and in the restaurant business that are testifying behind me, so I won't...they can answer any specific questions maybe.

SENATOR JANSSEN: Okay. Any questions? Seeing none, thank you, Jim, for being here. Senator Phil Erdman from Bayard, Nebraska, has joined us.

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, appearing today on behalf of the Nebraska Licensed Beverage Association; that's M-o-y-l-a-n, from Omaha. We're here to support this bill. I just might have one suggestion. Rather than limiting it to one bottle, at a lot of large parties, you know, you might have people drinking white wine, red wine, pink wine, and they might have a couple or three bottles left over, you know, when they get through with their function. I would recommend opening it up or just not limit it, or maybe three--not more than three, you know, or not to exceed three bottles. That would be my only recommendation. Otherwise, our organization supports it. We think it's a pretty good bill. Any questions?

SENATOR JANSSEN: Questions? Seeing none, thank you, Mr. Moylan. The next testifier?

JIM BALLARD: Senator Janssen, members of the committee, my name is Jim Ballard, B-a-l-l-a-r-d, and I'm with...I'm one of the owners of James Arthur Vineyards, and I'm also representing the Nebraska Winery and Grape Growers Association today. And we support this bill for a couple of reasons: one, I think it's smart; it shows a lot of responsibility, not only on the part of the establishments, but also consumers. I think anything that we can do to provide better safety for our customers while keeping our bottom line intact is a win-win situation for everybody. And I'll give you an example. On occasion, especially during our peak season on the weekends, we frequently get people that...couples or individuals that come out for one of our events or just to come out and taste wine that order a bottle of wine, and they can't finish it and they come to

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me and they say, hey, can you cork this up and let me take it home? I say, no, I can't do that. They basically have three options: one, we keep it and we dump it; two, they go back to their table and they drink it; or, three, they sneak it out when we're not looking, and I'm sure that happens on occasion. Or even before they even buy that bottle of wine, they decide not to buy it because they know they're not going to be able to finish it. So the later two are the ones that really scare me. If they sit there and drink it without us, maybe not...you know, if we have 100 to 150 people around on a Saturday afternoon, it's...you know, we try to keep track of everybody as best we can, but for them to sit there and drink it or for them to sneak it out is a real possibility. So I think this eliminates the need or eliminates them having to do that if they can seal this bottle of wine up and take it home with them. So I think this bill is just a good deal for the wine industry in general, and allows people to experience...a better opportunity to experience or enjoy their wine, whether it's in a restaurant situation or on a winery deck listening to some great jazz music on a Saturday. So I just think it makes a lot of sense and I would answer any questions that you might have.

SENATOR JANSSEN: Questions? Seeing none, thank you, Jim, for being here.

JIM BALLARD: Thank you.

SENATOR JANSSEN: Next proponent?

GREGG VANIER: My name is Gregg Vannier. I represent Venue Restaurant and Lounge, located here in Lincoln, Nebraska. Currently, we have a wine list consisting of 86 wines and nine champagnes. Twenty-three of these wines are served by the glass. I think this bill can benefit the whole community, ranging from business owners to also the general community. For me, from a business owner, it could help me in two ways: one, instead of having a table sitting around after dinner and drink their whole bottle of wine, I could reduce my turnover by 15 to 30 minutes which would give me a fighting chance for survival against a lot of the chain restaurants that can turn tables over from 45 to 75 minutes. Another thing I do, I think, with giving them the option of being able to bring home their bottle of wine is this might

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entice them to purchase a higher priced bottle of wine.' A higher priced bottle of wine is going to be more profits in a business owner's pocket also. But the most important aspect of this bill is safety, by far. And let me give you a scenario. Well, first of all, for every bottle of wine there is five glasses. Each glass represents five ounces of wine. Now, one five-ounce glass of wine is equal to one 12-ounce bottle of beer, which is equal to one and a half ounces of a distilled spirit, vodka, tequila, or whatever. So as you can see, wine can sneak up on an individual pretty quickly while they are eating dinner. So let's look at it this way. Let's say you are getting ready to finish your dinner and the wine is starting to sneak up on you and you can feel it a little bit. Now you have a decision to make. Do you be responsible and do you put the bottle wine aside and just move on? With this bill, we can give them the option or they put a cork in it, put the bag on it, and take it home with them--be responsible--rather than enticing them with the option where they could roll the dice, finish the bottle of wine since it's basically \$30 sitting on the table right there in front of them, and getting behind the wheel. So I think to pass this bill it's very important as far as safety for the community. And I think that's the most important thing about it. In closing, I just want to say that there is no beverage of moderation, only the practice of moderation. And this bill definitely could help us practice moderation.

SENATOR JANSSEN: All right, thank you.

GREGG VANIER: Questions?

SENATOR JANSSEN: Questions? Seeing none, thank you. May I remind you to make sure you are filling out the testifiers sheets and dropping them in the box up in front, whether you are going to be a proponent or opponent. Next proponent, please.

JOHN FISCHBACH: My name is...Senator Janssen and members of the committee, I'm John Fischbach, spelled F-i-s-c-h-b-a-c-h. I'm here to...proponent for this bill. This is the first time I've ever testified so I may be a little nervous. I'm also a member of the Nebraska Winery and Grape Growers Association. This bill basically, myself, personally, I'm a connoisseur of fine wines from Nebraska.



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And I occasionally have to take in my own bottle of wine, which is legal in the state. I do pay an additional charge to the restaurant to open that bottle of wine. And many times I cannot finish the entire bottle of wine myself, even though as large as I am you think I should be able to, but a lot of times, eating dinner, alcohol does creep up on you and even a guy my size, I can't finish the entire bottle. So this bill would allow me to take home my own bottle of wine that I have brought in with me, be able to take it home with me. Any questions?

SENATOR JANSSEN: Any questions? Seeing none, thank you, John, for being here with us today. Next proponent? Are there any more proponents? Any opponents? Seeing none, anyone in a neutral capacity? Okay.

SIMERA REYNOLDS: Hello.

SENATOR JANSSEN: Sim, how are you?

SIMERA REYNOLDS: Chairman and members of the committee, I'm Simera Reynolds and I'm representing Mothers Against Drunk Driving. I'm the executive director for the state organization. I want to, first of all, thank Senator Mines for keeping me out in the loop on this piece of legislation and letting us know what his intentions are, and we appreciate that. Mothers Against Drunk Driving is against, you know, obviously drunk driving, and we're not against the sale of alcohol, so we would not oppose this piece of legislation. And for the pages, I do have some information on this as there are 27 states currently that allow wine doggie bags. (Exhibit 3) Sixteen states, including Nebraska, have state statutes stating that it is illegal to permit a person to remove the wine from the premise, and then there are seven states that have no legislation regarding it either way. MADD is...as I said we're not against the sale of alcohol; we're for responsible use. And we do believe that this would possibly lend toward better practices, minimizing drinking and driving, and so to that extent MADD is in a neutral capacity. We're not opposed to this legislation at all. And if there are any questions?

SENATOR JANSSEN: Okay, so you're right in the middle of this one, is that right, Sim?

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SIMERA REYNOLDS: Neutral support--there's no neutral; you know that. (Laughter)

SENATOR JANSSEN: Any questions? Seeing none, thank you.

HOBERT RUPE: Good afternoon, Chairman and senators. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. And although I guess we're neutral, sort of leaning in favor, I guess, but there is not a box to tick on that one, the Liquor Control Commission was approached earlier this year by I assume the same gentleman who subsequently approached Senator Mines, and unfortunately our response was, this is a statute and not a rule of regulation; you're talking to the wrong body in this regard. Our concerns...and I have not seen the amendments, but I was working with Senator Mines' office and it was more the placement of the proposed language, they were trying to place it in 53-101, which is sort of the this is the Liquor Control Act, and it was more appropriately placed under what a retail licensee can do. And so if I understand where they were going to put the amendment, they're going to move it to 53-123.04, which says that a licensee...I believe that's where they're putting it. I'm not sure where they're putting the farm winery. They'll probably have to put that somewhere in the Farm Winery Act. And I...see that would be my one concern from a mechanical, legislative point of view. The reason it's better placed there is that sort of delineates the rights and responsibilities of a retail licensee. With the exception of the farm winery, this bill will affect only two of our classifications of licensee once the new classifications structure goes into place this May. It will affect your Class I licenses and your Class C licenses, as those are the only license types which allow on-premise consumption of a bottle of wine. Your Class C licenses are sort of the full-service license type; they allow beer, wine, and spirits, both on and off sale. Your I licenses allow beer, wine, and spirits on sale. So one thing that we'll have to be cognizant of that this is sort of allowing an I premise, which is normally not allowed to have off-premise powers, a limited ability to do this if this bill is advanced. So I guess that's why the commission was neutral, was that the general idea behind it seemed sound and was being put forward with the position that normally the commission looks at to promote temperance, but was more some mechanical

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problems we had with it, and hopefully the amendments have fixed...have corrected that. I know I was working with Stephanie in Senator Mines' office and it was a pleasure to work with her, trying to put this in the right place.

SENATOR JANSSEN: Hobie, it's under 53-123.04 now.

HOBERT RUPE: Yeah, that would be helpful for the retail licensees. I'm not sure if we put the farm winery in there, that's going to cover them. We might have to put it up later on somewhere else, but I'll have to look at the amendment.

SENATOR JANSSEN: So the two of them couldn't be together in the...

HOBERT RUPE: Well, it probably...

SENATOR JANSSEN: In this section.

HOBERT RUPE: It can't; not really. The problem with it is what a farm winery is. A farm winery is not a classic retail license. As you are aware, there is a three-tiered system. You have a manufacturer, a wholesaler, and a retailer. Your farm wineries sort of have partial powers at each three-tiered, so they're not a traditional, just a retail license. They also manufacture it and have limited wholesale abilities, so I'm not sure where we'll have to put that in. We might have to put that in underneath the part of the Farm Winery Act itself as an additional power of what a farm winery, which is whole different Class Y license, can do.

SENATOR JANSSEN: Senator Mines does have another amendment that goes under 53-123.11, which is the farm winery licenseholder.

HOBERT RUPE: Okay. Yeah, and so that would probably be the appropriate place to do that because that's what sets forth the abilities of that. As I said, I had not seen the amendment. I was concerned if they were trying to put both of them in .04, there might be some problems with that from a...

SENATOR JANSSEN: Yeah, the two of them.

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HOBERT RUPE: ...mechanical problem.

SENATOR JANSSEN: Thanks. Senator Fischer.

SENATOR FISCHER: Thank you. I have a question. I don't know if you'll be able to help me or not; I think you might though. We were just handed this map by the lady with Mothers Against Drunk Driving, and on it it says, in Florida, Florida officials say very few restaurants hold the licenses that would allow it, meaning the doggie-bag wine. As I'm reading the bill, this does not require any special license in order for the restaurant or the business in order to do that?

HOBERT RUPE: I can only assume that they have a similar...as you are well aware...or you might not be aware, one of the interesting parts about liquor law is you have about 54 or 55 different jurisdictions before you throw in different city jurisdictions. I say 54 because Hawaii has different liquor control boards for every single island. And so you have varied differences. I mean, because after Prohibition in '35, your different states formulated their own liquor control regulations. And that's one of the concerns that I had, is we might want to make sure that it is specific in the discussion that this will allow a Class I license to take one of these resealed bottles of wine off the premise, which would be an expansion of their normal powers and abilities. Because normally an I license, which is a traditional restaurant license, doesn't have an off-sale capability. A lot of your...more and more of your restaurants are getting C licenses just for this purpose because they then...you know, somebody will come in, get a good bottle of wine with their dinner, they'll want to buy another bottle of wine to take home with them, a full bottle, and then they'll be able to buy it. So you are seeing more and more of that happening. You are seeing more of a shift towards the C license, even if they don't have a large off-sale capability, because it's only \$50 more a year.

SENATOR FISCHER: Right. As I read the bill though, and perhaps Senator Mines would address this when he comes up, no additional license would be required.

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HOBERT RUPE: Yes. And I don't think it has. I just wanted to make sure that it's clear that by putting it in 124 we're specifically saying that a place which has a retail license for on-purpose consumption, which I believe that's what the bill says, would include these I's so it's sort of...as allowing them an exception which would normally be a limitation on their license to sell off-service sale.

SENATOR JANSSEN: Any other questions? Again, thank you, Hobie.

HOBERT RUPE: Thank you.

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing none, Senator Mines to close.

SENATOR MINES: Thank you, Chairman Janssen and members of the committee. I think the fact that everyone is singing the same song, we're all talking about responsible drinking, and I really did want to come back and show you the wine doggie bag and you can pass it around and see that it has a removable tape and, like someone explained, the...when you...it's got glue under it. When you press it closed, it's closed and cannot be resealed...opened and resealed. So I will pass that around and urge your passage of LB 388.

SENATOR JANSSEN: Okay. Any other questions? I have one more.

SENATOR MINES: Sure.

SENATOR JANSSEN: I have one more. Now, I should have asked Hobie this. If that is broken, then they could be prosecuted for open container.

SENATOR MINES: Absolutely. It would no longer be a sealed container.

SENATOR JANSSEN: All right.

SENATOR MINES: Absolutely. And they must have that receipt with the meal.

SENATOR JANSSEN: Right. Okay. Thank you, Senator Mines.

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SENATOR MINES: Thank you.

SENATOR JANSSEN: That closes the hearing on LB 388. The next bill we'll hear will be LB 530, which is a General Affairs committee bill, and legal counsel will offer this.

LB 530

LAURIE LAGE: Senator Janssen, members of the committee, my name is Laurie Lage, L-a-g-e. I'm counsel for the General Affairs Committee, here to introduce LB 530. This is a bill that the committee introduced on behalf of the Liquor Control Commission. It does three things. First of all, I'll do the two more nonsubstantive provisions. First, the bill eliminates the Keg Registration Report, as the commission says it's no longer needed. Under the statute the commission has submitted a report to the Legislature on the effectiveness of the Keg Registration Statutes. Annual reports have been submitted for over 10 years now, and the program has been deemed successful by the commission; therefore, they do not see a need to continue issuing that report. Second, eliminating the requirement that state excise tax reports and schedules be submitted under oath or affirmation, or in other words, notarized, is necessary for the efficient submission of these documents electronically. E-filing will simplify the reporting process and will accelerate filing time for the commission. And the third thing that the bill does--and this is something that the commission requested in its annual letter that it sends to the Governor and the Legislature of its suggested legislative changes--the commission would like to have more discretion to take license density into account when issuing retail liquor licenses. The commission has seen an increase in violations in this area, where there's an over saturation of such licenses. The suggested revision to Section 53-132 would change the directory language into discretionary language--that's the "shall" to "may" language--and update the criteria used by the commission and local governing bodies in considering new licenses. There's a lot more to be said on that. There are a lot of people here to testify on that specifically, that provision of the bill, including Hobie Rupe with the Liquor Control Commission, so I will stop there and ask if you have any questions.

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SENATOR JANSSEN: Anyone have any questions? Senator Connealy?

SENATOR CONNEALY: Thank you, Senator Janssen. This would be for new liquor licenses, and it would just be another criteria that the commission could use in granting new licenses, correct?

LAURIE LAGE: Correct. It is not intended to reach current liquor licenses, only new applicants.

SENATOR JANSSEN: Senator Fischer?

SENATOR FISCHER: I'm new on this committee. Can you tell me what a Keg Registration Report is?

LAURIE LAGE: Oh, sure. I apologize. I think I might let Hobie Rupe explain that a little more. It's a program that the commission oversees and I better let him explain that in more detail.

SENATOR FISCHER: Thanks.

SENATOR JANSSEN: Any other questions? Thank you, Laurie. We'll take proponents of the bill, LB 530.

HOBERT RUPE: Good afternoon, again, Senator Janssen, members of the committee. My name is Hobert Rupe, R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission and LB 530 contains three of our recommendations. As you're aware, every year under its statutory duty, the Nebraska Liquor Control Commission is required to send a letter to the Governor and to the Legislature putting out areas of perhaps concern legislatively that the commission is seeing. And this one contains three of them. Perhaps the easiest one is the requirement that the under oath requirement on certain excise taxes be eliminated. Currently, the Nebraska Liquor Control Commission collects approximately \$25 million a year--last year it was \$24.7 million in excise taxes. Excise taxes are collected at the wholesale level. They are remitted to the commission, generally through a foreman under oath, which means one of my people, about once or twice a month, is walking over here with a baggie with about \$1.8 million worth of checks in it to deposit with the Treasurer's

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Office. It's our concern, and part of the idea to streamline and make state government more efficient, is to allow electronic filing of those documents, and then to allow an electronic funds transfer. As some of you may be aware, I just recently celebrated my one-year anniversary as the executive director, and one of my goals was to try to utilize technology to make it more efficient for the citizens and also for state government. And when I broached this issue, I was told that no, we can't accept electronic fund transfers because we have to have these darn things certified under oath. And so that's what we're trying to do there. Once this hurdle is removed, then we can work with the Treasurer's Office to allow for some of these electronic fund transfers, because often many of the wholesalers are remitting rather large checks. As I said, you know, if you're getting almost \$25 million a year, we're averaging about \$2 million a month in receipts. The second one is for the Keg Registration Act. Ten years ago the Keg Registration Act was put into place as an attempt to curb underage drinking and irresponsible drinking activities; you know, the classic kegger out in the North 40 type parties, or at the house when mom and dad happen to be away. And the requirement there is there needs to be a registration act on the keg, that's put on at the retail level, so when the police go out there, they know exactly which 21-year-old bought this keg for these 18-year-olds. As part of the Keg Registration Act was a reporting which was trying to look at how efficient it was being handled and at what level. And to do that, the commission does a yearly report. We send out requests for information to law enforcement officers to check, you know, whether there have been any violations and how this has been working. And for the most part it's been a--actually, not for the most part, it's been an unqualified success. In fact, other states have modeled their Keg Registration Act on Nebraska. I know Missouri recently did it. The problem that we're seeing--the problem is the report was to make sure that it was working. I think it's clear that it has. We're actually getting more terse responses from some law enforcement things saying, of course it's working. Quit asking me this question. So that would be that response. I think our Keg Registration Act has worked remarkably well, and so we're trying to remove the reporting requirement from that. The more perhaps interesting issue would be the changes that the commission is seeking to 53-132, the first of those changes to sub 2,



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where, you know, it says, a retail license "shall" be issued. The one thing we're trying to do by making that language "may" rather than "shall" to reinforce the discretion of the commission, is that it's important to remember that to receive a liquor license the first time is a privilege. You have a privilege to get a license. There is no right to a liquor license. Some courts have determined later on that you a property interest in a renewal. In other words, if your license...you've operated your license and you've not been found guilty of any violation, hasn't been suspended, cancelled, or revoked by the commission, you have a property interest in the renewal of that license. The problem that the commission has been having with that "shall" to "may" is sometimes the commission is seeing people up there, who...they really have bad...they have an idea that this person is going to be back in front of them in a couple of months under violations. But unless we can specifically find one of these sayings, they feel that they're hamstrung; they have to give this person a license, even with these otherwise valid concerns. The other area where we're trying to make a concern is to try to look at the over saturation issue, which as Ms. Lage said, has been an issue. We're not seeing a problem as much with the numbers of licenses, but when you get an over saturation in one area or neighborhood, you generally see an increase in violations. These violations are generally of three types--sales to minors, after-hour violations, and sales to over-intoxicated individuals. To me, from the way I'm looking at it, and from my own background--prior to becoming the executive director, I was with the Attorney General's Office, and I served as the administrative prosecutor--is you're seeing people, when you get such a competition over saturation, people are no longer viewing the Liquor Control Act as a health and safety and welfare issue for their customers, but as an impediment for them to continue going on. And so what we're trying to do is, you know, the change is to subsection E, which already states that one of the things that the commission can consider in issuing these licenses is the existence or absence of other retail licenses or craft brewery licenses with similar privileges within the neighborhood or community of the proposed location, and then we're adding on that we can actually--and it's something I think is somewhat implicit in there, but I think it's implied, but it should rather be put forth--that the commission can look at what is the impact

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this license is going to have upon the ability of the local governing body to provide its normal infrastructure, primarily in law enforcement. Will a big, new nightclub, even if people are otherwise normally qualified to have a license, is this going to put such a strain on a local police or sheriff's office, so that this might prove problematic and we might have violations? The other part of the expansion is to look at are we going to see more violations? Are we just throwing more gasoline on a fire in certain areas, where we're already seeing problems arising? And the commission sort of does that already, but one of the things that we're trying to do, by spelling out how they can look at that, is as you're aware, the commission receives recommendations from local governing bodies, either to approve or deny. We're trying to let them say--trying to point out to some of the local governing bodies--have you factored in the impact this is going to have, as part of the reason why you might approve or deny? Oftentimes the commission will get a motion that says, we move to deny, and there's absolutely no supporting reason why they denied it. No one shows up from the city council hearing, and so, you know, the commission is left sometimes to ponder. We're trying to clear out...we're trying to work more with local governing bodies in that regard. So I guess that's the purpose why the commission, you know, sought these changes to this statute. I'll be happy to answer any questions.

SENATOR JANSSEN: Senator Erdman?

SENATOR ERDMAN: Hobie, help me understand something. You said that currently, if the commission believes that there will be somebody that will not be able to...somebody's going to back in front of the commission under some type of disciplinary action, that they feel compelled to go ahead and grant that individual license, when b and c of subsection 2 of 132 already provides that if they are shown not to be able to comply, they don't have to grant them their license.

HOBERT RUPE: Yeah, but the problem that we have is sometimes they haven't had a license before, so we're unable to make that "ascertainment." And sometimes by making the "may" to a "shall" would resolve a similar situation which recently happened up in Whiteclay. Up in Whiteclay we had a license which was cancelled by the commission, the Don

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Schwarting license, because the owner was a convicted felon. His son applied for that license to replace him, basically. The commission, because within the last four years there had been two violations from the Arrowhead Inn, where he was in place--he was the person working the clerk and had actually committed the violation--did not feel that he was able to comply with the liquor law. The district court reversed us, and that's going to be appealed, but the district court, in its de novo review, said oh, there's not enough evidence there. You know, the fact that, you know, this person had two violations as an employee, and that was what the commission was doing--the court somewhat ignored that. By trying to make it "may," it will allow sort of these marginal areas to give more credence to the commission, because they're the actual ones hearing the evidence in front of them. The district court deals with this de novo under review, so they're getting a record of the agency. They're not seeing the actual applicant there; they're not seeing the citizen protesters who might be there, or the city council which is revoking it. You know, so they feel sort of hamstrung by getting court decisions like that on close calls. So these changes, I think, would help take care of that type of issue.

SENATOR ERDMAN: So essentially the challenge isn't on the decision, it's the lack of evidence to make the decision.

HOBERT RUPE: A lot of times it is the lack of evidence on the decision oftentimes. It's also, you know, sometimes...and I'm not going to say it's a gut feeling, because that might sound arbitrary and capricious, and that's not what the commission is trying to do here. They'll get people in here who will say, yeah, I was the minority partner in this problem. I didn't have anything to do with it. I'll run this place well. And so faced with evidence like that, trying to get more discretion to look at the totality of the circumstances, for the commission, I think would, you know, be beneficial to the health, safety, and welfare of the citizens.

SENATOR ERDMAN: Under this change, if an applicant is denied, which you have the authority now, obviously, just a matter of how it's documented, what would be the process in which...is there an appeal process?

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HOBERT RUPE: Yes. Any license which is denied can be appealed to the District Court of Lancaster County. The appeal is under the Administrative Procedures Act, it's de novo on the record, which that means the judge isn't bound by the decision of the commission. There's case law which says he should defer to the commission, you know, if all things being equal he should defer to the decision of the commission, because they were there. But it is de novo, so he can substitute his own judgment on that. And then it would appeal...as in this case, as is currently happening, it can then be appealed to the Court of Appeals by the Attorney General's Office.

SENATOR ERDMAN: One final question. On the new language on page 3, it would appear, as you read the different sections or the different things that the commission should consider, that the types of things you're talking about--the density and those issues--are actually already outlined. And one of the things that you pointed out was law enforcement. That's actually not in the new language as an existing law. Do you feel that--and I have a little bit of concern with how this language reads, but do you feel that that language is necessary, or that you already have the authority to determine the density factor, and the permissiveness, I guess, is probably the bigger issue?

HOBERT RUPE: We can somewhat look at density, and we can't. I mean, we can't look at, by earlier court decisions...the idea that there might be competition, you know, which sometimes we would receive, where a town would vote to deny, just because they don't want more competition to it. I think we sort of...like I said, we have it there. I'm trying to make it, you know, to spell it out. And one of the reasons why we're trying to spell it out...what the commission knows and what maybe local governing bodies know, sometimes aren't always the same, and by trying to spell out some of the issues which...concerns they can raise before the commission, we think is helpful in that dialogue. You know, one of the things I've been trying to do in the last year, besides the electronic site update, is trying to go back out to the city clerks and city councils to let them know that, you know, we seriously rely upon what recommendations they make. Sometimes we might disagree with them and overrule one, but we try to...but as much information as the commission can have when it's making its

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determination, is best. And so that's the reason I think the changes on page 3...to me, personally, on 2, the changes to the "may" to make it clear that the initial time you're getting a license is a privilege, is one of the largest criterias.

SENATOR ERDMAN: And I guess the final thing that I would have is, maybe from my reading, but maybe for no one else, it would probably make more sense to me to specifically just put a section in there that says to determine the density of licenses in an area, as opposed to this run-on, trying to say what you could say by using less words and making it more concise about what you're trying to accomplish.

HOBERT RUPE: My problem when this first issue came up, I looked at some of the other density language around the country. A lot of your statewide density plans have been struck down, and your ones which haven't been struck down are generally your locality ones, like I looked at Kansas City's quite extensively. But it doesn't really apply well in a statewide setting. You know, if you try to put a number...you know, if you were going to say density on this, I feel you almost need to have some ratio in there, because if you just say density without having a ratio, it sounds like you're trying to do a scientific analysis without the scientific background on this one. The language that is in E is clearly, I think, designed to allow for more discretionary analysis by both the local governing bodies and by the Liquor Control Commission.

SENATOR ERDMAN: Okay, thank you. Thank you, Mr. Chairman.

SENATOR JANSSEN: Any other questions? Senator Connealy?

SENATOR CONNEALY: Thank you, Senator Janssen. Hobie, your case is...and I agree with this. But your case is that by changing "may" to "shall" that it strengthens all these criteria, that it gives you more ability to...accurate law enforcement, all the criteria that you...the tools to be more useful to you.

HOBERT RUPE: I think it does. I think, you know, our current makeup of our committee includes two attorneys, and unfortunately, all of us attorneys read law the same way, and if it's "shall", you know, they felt a little more

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constrained, you know, that unless they can point out a couple of examples in each of these, that they're going to be reversed by the district court. By making it more discretionary, by giving them more flexibility, I think it does give them more tools to enact the purpose of the act.

SENATOR JANSSEN: Senator Fischer?

SENATOR FISCHER: Mr. Chairman, on page 2, when you're talking about changing the "shall" to the "may," I agree with you that it's privilege to get a license, and it's not a right. Why I guess I have a problem with it, I'm thinking if applicants meet the criterion and meet the requirements, how much discretion do you want the commission to have on this? You know, you said you're going on feelings, and you said it sounds arbitrary. I agree, it sounds very arbitrary to me that you're going to make these decisions, even if applicants meet the requirements, you're going to have this gut feeling, well, I think we're going to see this guy in a couple of years, and so we're not going to give him the license now.

HOBERT RUPE: Perhaps I misspoke. I mean, there's a feeling sometimes you get, and there's indications, there's factual indications found; i.e., this person might have been a clerk here and gotten picked up for sale to a minor himself. Two years later he's saying, well, I'm going to buy this bar out. I'm fine, you know, I've got no problems like that. And so, perhaps I misspoke. I'm not going to sit there and go on feelings. I think I made it clear that they're not intended to be arbitrary. I'm thinking of it has trying just to give them more discretion, when they have a couple of small facts from the areas, because it's clear from the statute what they can look at, that if they get two or three small, more minor violations, or more minor concerns, they can then say...then they can sort of combine those, as a solid reason for denial.

SENATOR FISCHER: You said the commission knows certain things that local bodies don't know. When you have a hearing on these facts, when people want a license, don't the local people come forward at those hearings before the commission and give their opinions on if the person should be granted a license in the first place?

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HOBERT RUPE: Sometimes they do. Unfortunately, sometimes some of the violations that we get from a public protest, are people who just don't like the sale of alcohol. And, you know, whether they are morally opposed to the alcohol, is a fantastic thing for them, but it's clear that alcohol sales is legal within the state and within this country, and the mere fact that somebody might have a personal objection to the sale of alcohol isn't a reason for the commission to deny them a license.

SENATOR FISCHER: So you say when the commission knows certain things that the local bodies don't, do you ever share those things that you know?

HOBERT RUPE: Well, we try to. We've received one reason...case, I believe it was up in Wahoo, where one of the reasons that the city council gave for its recommendation of denial was, we have enough liquor establishments. We want to protect our existing businesses. Well, there's a Supreme Court case which clearly states that you can't use protectionism to protect your existing licensees as a reason to deny new licensees. And, you know, so sometimes we get the rap that we're not listening to a local governing body, but we're applying, you know...the local governing body might not be aware of that case that's out there. And so we're trying to let them know, through more education, you know, of what problems there are in denying or in recommendations for approval of licenses.

SENATOR FISCHER: Okay. You said that you want to look at density somewhat, is that correct, when you're talking about certain areas being over saturated?

HOBERT RUPE: And I think that's what this existing law, what this existing language allows them to do, because...

SENATOR FISCHER: But yet you're afraid to use the word density in here?

HOBERT RUPE: I think if you use density without having a number ratio, you might have a problem on an appeal. That's the attorney in me raising that issue, that if you say, looking at license density, if you don't say that you should be able to have X to a certain population base, you might be in difficulty. And I'm not really sure that a statewide

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density plan, in that regard, would work here in Nebraska. So therefore, what we're trying to do here is allowing local governing bodies, if they think that, when looking at the impact this is going to have, in part of the consideration of the existence or absence of other licenses with similar rights in that geographic region, you're able to factor that in on a case-by-case basis, and address a lot of the concerns which might otherwise be looked at in that regard.

SENATOR FISCHER: There again, I think that sounds kind of arbitrary. What would be the problem of putting in the numbers ratio, and to come up with a definition of density on this?

HOBERT RUPE: I'm not sure...I mean, you could.

SENATOR FISCHER: I think if people meet the requirements that have been spelled out in law, they should have a license.

HOBERT RUPE: They should, yes. They should have a license, if they meet the requirements that are spelled out in license, and if the city council...if the local governing body feels that the increased...that another license isn't going to cause additional impact, then I don't see a problem.

SENATOR FISCHER: But where does the local body come up with something that's not just pulled out of the air or comes from a gut feeling? Don't you think that maybe if you put in...if you used the word density--you've been talking about density, but it's not in the bill--if you put density in here and used that and have a ratio, then you can have something, I think, concrete that people would understand a judgment against them by the commission then.

HOBERT RUPE: Well, my problem would be, and the example I used when we were talking about an issue that might arise with density would be in Lincoln, Nebraska. If you were to open up a 500-capacity bar/nightclub in southeast Lincoln currently, it might have a negligible impact on the ability of LPD to enforce it. If you put that same 500-person club between 13th and 15th and O Street, where you already have 5,000 capacity of bars allowed, the impact this might have on the LPD to enforce the rules and regulations is markedly



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different. Yet they're both in the same city. That was one of the problems that I saw when looking at it from a pure density or numbers issue, based off population of a city. And so that would be an example. People, when they asked us about this, you know, what sparked this bill, why we had done that, three recent issues. The one I discussed out in Whiteclay was one, the possibility of Lincoln was one, and another recent one was Falls City, Nebraska. We denied a license application down there, based on density type issues, where the city council, they voted--it was a no-vote because it was split, but there was an objection by the citizens saying, we've got too many licenses in this area, and they were able to bring in where they had a pretty stagnant level of population. They were seeing a continual increase in liquor licenses, and then they were also able to see an increase in calls to police service to those issues. And so when they brought that forth as a concern from the citizens of Falls City, the commission was able to deny that. I think the proposed changes that are contained in LB 530 are making it more clear that the powers that already exist in the commission are there, and that they should be utilized. As I stated earlier to Senator Erdman's question, if the commission is arbitrary and capricious, I'm quite positive the District Court of Lancaster County is going to let them know that, forcefully, if they're acting without some basis for its decisions.

SENATOR FISCHER: Currently, anyone who meets these requirements can have a liquor license. There's no cap on the number of licenses that I can have in Valentine, Nebraska, or that you can have here in Lincoln, Nebraska. It doesn't matter.

HOBERT RUPE: There is no cap.

SENATOR FISCHER: Valentine can have the same number as Lincoln, right now.

HOBERT RUPE: Valentine can have the same number as Lincoln, right now.

SENATOR FISCHER: Okay.

HOBERT RUPE: And that's what we're trying to do, is trying to put some reasonableness into the issuance of licenses.

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SENATOR FISCHER: Thank you.

SENATOR JANSSEN: Any other questions? Hobie, I have a couple. Right now, the way it is, it's up to the local governing bodies, whether they shall have a liquor license.

HOBERT RUPE: Well, they make a recommendation. It's a nonbinding recommendation. Unfortunately, the reason--I'd like to strike the unfortunately part. The reason why it's a recommendation, there used to be, a lot of times, a local governing body would deny a license because it would be in competition with the mayor's brother-in-law's bar, and we saw quite a bit of that. And so that's why you're trying to make it from just a local governing body, to have a statewide board, in this case the commission, you know, to make the final decision as to whether there's an issuance or a denial. That said, the commission places great weight upon a recommendation from a local governing body, because they're the people who are on site there. They're the people who know their city, their county, you know, what problems might this have. One of the reasons we get a lot of times is the idea of character reputation. Unless somebody has a felony or Class I misdemeanor, which might be another bar, you might have somebody who might have lots of civil--and this is an actual case recently--where a person was trying to seek a license out in the western part of the state. Unfortunately, he had about five or six judgments against him from his last couple of businesses, where he took a whole lot of investors for a ride. And so the local governing body says, this person's not a trustworthy individual, he's already defrauded members of our community, and so that gave the commission a reason to deny the license, and that was based upon the local recommendation.

SENATOR JANSSEN: And you talk about saturation of licenses. You know, and each case is different. I know I have a small town in my district that--around 800 people, 900, something like that--but they have three very good restaurants. And the population could sometimes double in that small community in the evening. Now they come from a larger city and come out and, you know, and adequately they have the right amount of licenses to handle that many people in the evening, and they're only open, say, from five o'clock to midnight. And in that case, if you were to look at that as

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the commission--I don't want to throw water on your fire here, but that local governing body knows better than the liquor commission would, because you look at the amount of licenses, and you look at the population of that city and say, oh, they're saturated, where that isn't the case. You know, from five o'clock in the afternoon until midnight, the town doubles in size.

HOBERT RUPE: Now the key thing you have to remember, before the commission denies any license, there's a hearing. And so we've here recently had a case like that out in Edgar, Nebraska, where you've got a town of 530 individuals, where you already had three localities which had off-sale permits. We had another license which was coming in and was trying to open a restaurant, which would have similar situations. Well, we had a hearing. We received evidence. We received evidence from the local chamber of commerce; they were supporting of that, we had her come in, and that issue was granted, because she was going to be offering something that wasn't already there. It didn't look to me that there was going to be a problem. The alcohol was secondary to her primary duties of being a restaurant. So that's one thing to always remember that the vast majority of licenses which are issued by the commission are issued without any hearing. There isn't a issue, because they meet all the criteria. There's not a hearing required because the local governing body says no, or that there's a citizen protest. In fact, almost all licenses would happen like that, and we're never going to see them. We're not going to factor that in. We're trying to give more ability to the local governing bodies to give them another reason why they'd say, wait a minute, we think we might have too many people here, when we're comparing how many other licensees there are, so would you please have a hearing and make that determination? So, you know, that's part of the issue there, because most times when we have an actual hearing on a license, they generally come--and I know, because I see a whole bunch of them when we're actually deciding whether we're going to have a hearing or not--would be whether there's enough in the record. Unfortunately, we have a lot of licensees who have quite a few minor legal infractions, and we have a licensing policy which is set up to determine--you know, it's a point system--when that person would be required to have a hearing before the commission before a license would be issued. We also have a alcohol-related criteria. If you've had one

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alcohol-related crime within three years, or you've had two within five, and you apply for a license, you're automatically set for a hearing, because the commission is very cognizant that they really don't want people with alcohol problems to be having access. You know, it's sort of like having the fox guard the hen house idea in that regard. And so we do a lot of that. But the vast majority of licenses issued by the commission are licensed without a hearing, because the local governing bodies recommend approval, the background check and fingerprint check by the state patrol shows that there's no disqualifying convictions, and so the license is issued at that time. And so this would only impact the very rare majority of license applications.

SENATOR JANSSEN: Right. Any other questions? Seeing none, thank you for being with us.

HOBERT RUPE: Thank you very much.

SENATOR JANSSEN: Next proponent, please? We're on proponents.

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan appearing again on behalf of the Nebraska Licensed Beverage Association, the state association of retailers, and here in support, with a few cautions on the bill. The thing I'd like...

SENATOR JANSSEN: Jim, you are a proponent of the bill?

JIM MOYLAN: Proponent, yes.

SENATOR JANSSEN: Proponent, right. Okay, yeah. That's all right. Okay.

JIM MOYLAN: (Exhibit 4) Yes, no neutral stuff with me, ever. I have an amendment here which I think was overlooked when the bill was drafted by the commission, and it regards the oath and affirmations, and it just treats the retailers the same as the wholesalers. It takes out the oath and affirmation on their application form and all that stuff, you know. The commission still has plenty of powers. So we would ask that you would include this with the elimination of the oath and (inaudible), if you put the bill out.

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SENATOR JANSSEN: We'll consider that.

JIM MOYLAN: The other part--we support the other part of this bill. It's always been discretionary on whether the commission issued a license or not; however, if you met the criteria in 53-132.2, then it was pretty much mandatory that you receive a license. Now I think if I'm representing an applicant, you know, and the commission is going to have discretion and they're going to use the two new elements in this bill, the impact on the neighborhood or community, you know, I'd want to see some evidence that they have, that it's going to do that, you know. And maybe they would have it, and if they do, then they'd have a right to turn the license down. The other one is some evidence that it would see an increase in violations of the Nebraska Liquor Control Act, you know. I don't know how they'd prove that, but they would have to do that, you know. And I think I'm just looking at it from an applicant, from a person that's going to fall into, you know, one of those two categories. We think it's great. Number one, it's going to limit the number of licenses, but there's two things we want. We want a grandfather clause for all the existing licenses in the state, and I think the existing locations. And a grandfather clause for them to be sold or transferred. We want this only to apply to a brand new license at a new location. Then, you know, we're very happy with it. Now I think we can see that this is going to be great. If you have an area that's oversaturated, a little town of 200 with three licenses and they want a fourth one, and the commission says you already have too many, you know, then they can go buy an existing license. That would put a value on their business that they have worked in over the years, and built up. So we think it will add value to the licenses and to the businesses, you know, by having this. You know, we've advocated license limitations over the years, you know, and had a bill way back in the '70s that was vetoed by Governor Exon. So, you know, we would support that, with those two things, the grandfather clause for existing licenses and locations, and the sale and transfer of the business. An existing licensed applicant--I think it's probably, if we get to the area of a saturated area, then you're going to have to look at the type of license. I'm looking at the Old Market area downtown. There's licenses about every other store down there, you know, many of them.

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I suppose if they wanted to, they could turn a license down and say, because there are just too many in the Old Market, you know. Well, they better have some evidence that there isn't service needed by that. It would probably be a little different from an existing bar in the Old Market, and maybe a new hotel that's going in. Now that's a little bit different type license, and is probably going to have a different impact on that particular area, so there's many considerations they would have to take before they turn one down. We--you talked about local control. Back in the early '80s, mid '80s, the League of Municipalities got a bill passed that said local control. If the local governing body turned a license down, then the commission had to turn them down. Well, needless to say, we had cases that, you know, appealed that and went to district court. I think it went all the way to the Supreme Court. The Supreme Court said no, liquor is a matter of statewide concern and the enforcement of it, and consequently, we can't leave it to just local bodies. It has to be governed on a state basis. But they thought it was fine for the local governing bodies, you know, to give recommendations and that they take those recommendations as just one of the factors when they grant or deny a license, you know. So we've seen the local, and we know the politics of the small town, you know. I heard them back in those years when that was in existence, you know. The council members were going to take licenses away from people, and they'd be calling the office and so, we want it at a state level, and I don't think that this is going to change a lot, but it would help the retailers that have a good business and would like to sell their business, and probably worth more, you know. Thank you. We'd recommend, with our amendments, that you would advance the bill to General File. If there's any questions, I'd be happy to try to answer them.

SENATOR JANSSEN: Any questions? Senator Fischer?

SENATOR FISCHER: Mr. Chairman. I was surprised you were a supporter of this, until I heard you give your reasons, and then it was crystal clear. You say the bill is going to limit licenses. What's...I guess from listening to your conversation on this, then you're...it sounds to me like someone is not going to be buying a business. They're going to be buying a license, because those licenses are going to be worth lots, since we're going from "shall" to "may" here,

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and giving more discretion to the commission.

JIM MOYLAN: True.

SENATOR FISCHER: Thank you.

JIM MOYLAN: That's our philosophy. It has been for years, you know. Limit the licenses, build up a good business and be able to sell it, that would, you know, include some blue sky, on account of the license.

SENATOR FISCHER: Okay.

SENATOR JANSSEN: Any other questions? Thank you, Jim.

JIM MOYLAN: Thank you.

SENATOR JANSSEN: Next proponent, please?

TOM WORKMAN: (Exhibits 5 and 6) Good afternoon, senators. My name is Tom Workman, and I'm a staff member representing NU Directions Coalition. We're a campus community coalition, and I've come to bring you two items. One is an information briefing about the research that we've conducted both nationally as well as here in the city of Lincoln about the density issue, and the other is a letter from our cochair, Chief Tom Casady, one of the cochairs of the coalition who of course is the Lincoln Chief of Police, and who has been working on this issue pretty dramatically here in the city of Lincoln. You'll see in his letter that one of the things that he believes is that there is very good ways of collecting evidence about whether an impact is an impact particularly on the services of a city. And I think the evidence that we have in the briefing seems to give us the indication that it is an issue of venue as opposed to the full amount of licenses, and that in fact, saturation density is a word that is actually much more on a case-by-case basis. And so I'll leave those two items for you, unless you have any questions.

SENATOR JANSSEN: Any questions? Seeing none, thank you. Next proponent?

DIANE RIIBE: (Exhibit 7) Hi. Good afternoon, Senator Janssen, members of the committee. My name is Diane Riibe,

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and I'm the executive director of Project Extra Mile. We are a statewide network of community coalitions in Nebraska, working to prevent underage drinking. And I'd first like to thank Tom Workman from NU Directions for the incredible work that they do, and also for the information they brought forward. Lincoln really is a model for the rest of the state, in how they've approached their liquor licensing issues. We believe that changing the statute as proposed in LB 530 is imperative for Nebraska. We commend the committee particularly for taking a serious look at the need to provide additional tools for the Liquor Control Commission to have at its disposal, when identifying whether or not a license should be granted. As we shared with the commission during its hearing process in November, alcohol control policy within the state is in dire need of revision. The system is broken, and it needs to be fixed. There are far too many liquor license outlets. There is little ability for a community's voice to be heard when there are concerns. Law enforcement is stretched to an absolute limit, with minuscule resources before them to address the growing problems posed by too many licenses, requiring us, I might add, as taxpayers, to bear the burden of that needed and increased enforcement. As background, Nebraska has a liquor license for every 380 people in the state. When you add in the number of special designated licenses--those kind of one-day permits, and there are about 10 of them issued and granted every single day of the year--there is one liquor license for approximately every 210 people in the state. People who have never paid attention to this issue before are asking, when is enough enough? There is an increasing growing frustration within communities across the state regarding their ability to maintain an environment in their neighborhoods and cities that values a quality of life so reflective of Nebraska's good life. From neighbors in Wayne, Nebraska, to community members in Scottsbluff, to families in the Benson area of Omaha, Nebraskans are wanting their communities to be a place where they can raise their families with safety and security. The issue of outlet density and alcohol control provides the larger umbrella of a multitude of problems festering within this state, including the issue of Whiteclay. Sadly, the alcohol control problems are not unique to the community of Whiteclay; these same problems rear their ugly head, unfortunately, across the state. However, the citizens of Pine Ridge suffer greatly for our inaction. We should fix



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the flaw in the law that allows as many liquor licenses in a city, in a village, in a neighborhood as those that would apply. It's wrong, and it does need to be fixed. I would add that. Mr. Moylan's suggested amendments we would oppose strongly. That we would grandfather in current license holders is one issue, but to grandfather in the actual locations is a new and interesting concept. We thank you for looking at the issue. We again commend the committee for approaching it, and know that it's a serious one to be dealt with, and we would commit our efforts to making certain that it passes, if you move it out of committee. Thank you.

SENATOR JANSSEN: Any questions? Seeing none, thank you, Diane, for being with us today. Next proponent, please?

SIMERA REYNOLDS: (Exhibit 8) Chairman, committee members, my name is Simera Reynolds, S-i-m-e-r-a R-e-y-n-o-l-d-s, and I am here today on behalf of Mothers Against Drunk Driving and the members we represent. MADD would like to thank the General Affairs Committee for introducing this bill. First and foremost, MADD exists to support victims of alcohol-related crashes and to stop drunk driving. MADD is not against the sale of alcohol. However, when there is a high concentration of establishments in a community that sell alcohol without food, in particular, this causes some concern for the community members and our members, as well. Oftentimes it is not unusual to see stand-up bars promote low-cost drink specials, which in turn lead to high-risk behaviors, over service, and underage drinking. All too often this scenario leads to impaired driving, which is the paramount concern for MADD. MADD strongly supports the language change contained in LB 530, page 2, line 12 from "shall" to "may." It is not uncommon for our organization to receive phone calls from concerned citizens regarding the issuance of liquor licenses in the community, irregardless of the stand the local city council had already taken. As we all know, the Liquor Control Commission's primary duty, as stated in the Liquor Control Act is to promote the health, safety, and welfare of the people of the state and encourage temperance in the consumption of alcoholic liquor, and MADD believes that LB 530 will allow the Liquor Control Commission to use the full extent of their powers to achieve this mission. MADD appreciates your consideration of this legislation and asks in advance that you would promote or

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support putting LB 530 to the floor for full debate.

SENATOR JANSSEN: Thank you, Sim. Are there any questions? Seeing none, thank you. Next proponent, please? How many more proponents do we have? I see one, two, three, four, five. Try not to be repetitive in your testimony if you can, please.

MARK VASINA: (Exhibit 9) Good afternoon, Senator Janssen, and members of the committee. My name is Mark Vasina, V-a-s-i-n-a. I'm president of Nebraskans for Peace, the oldest statewide grassroots peace and justice organization in the country. We're celebrating our 35th anniversary this year, with our highest membership ever. Nebraskans for Peace urges support for LB 530. We thank Senator Janssen for making LB 530 a committee bill, and are grateful to the Liquor Control Commission for urging its introduction. LB 530 will add a much-needed legal foundation to empower the Liquor Control Commission to carry out its mandate to regulate in a responsible manner the sale of alcoholic beverages in Nebraska. I emphasize the need not merely to encourage the responsible sale of alcohol, a burden demanded of the merchants, but also to strengthen the responsible regulation of the sale of alcohol, a duty expected of our public officials. This distinction is important, because even a responsible, law-abiding licensee may operate in a locality where public health and safety concerns should preclude the licensing of additional or, in certain cases, any alcohol dealers. Efforts by the Liquor Control Commission to license dealers and regulate alcohol sales in a responsible manner are challenged daily by powerful pressures from the liquor industry and its allies. Moreover, in recent years significant court decisions have restricted the commission's apparent authority to deny licenses, even in cases where a community's concerns about public health and safety conflict with a licensee's presumptive right to deal in alcohol, so long as the licensee is not a convicted felon. LB 530 will help put the control back in the Liquor Control Commission. It will help improve communities across the state by empowering the Liquor Control Commission to recognize and deal responsibly with local concerns about unchecked license proliferation and the granting of licenses under undesirable circumstances. Of particular interest to Nebraskans for Peace, this bill will assist the commission in dealing with

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the outrageous situation in Whiteclay, where only 200 feet from the dry Pine Ridge Indian Reservation, three licensed off-sale dealers in this town of 14 residents sell over 12,000 cans of beer daily, largely to a Native American clientele which has no legal place to drink them--not on dealer premises, not on the streets of Whiteclay, not in their cars, not on the roads and highways, and not on the reservation. Efforts by the Oglala Sioux tribe to control alcohol sales in Whiteclay in the name of public health and safety have long faced resistance by Nebraska officials. Growing concern among the residents of Sheridan County where Whiteclay is located focuses not on the shameful neglect of responsible regulation of the beer dealers in that town, but also on the terrible message this behavior by public officials sends to the children and youth of Sheridan County. Last November, when the Sheridan County Board met to decide whether to recommend approval of a new license in Whiteclay, six local residents spoke in opposition and presented to the county board a petition with the signatures of 55 Sheridan County residents, likewise opposed to a new license. The Liquor Control Commission is on record with concerns that existing law enforcement in Whiteclay is inadequate. For three years the commission has formally recommended that the Legislature fund full-time law enforcement in Whiteclay during the hours in which alcohol is sold there. The commission has also historically appealed to the Legislature and state patrol to provide guidance in defining or otherwise identifying when an inadequate law enforcement environment should lead to denial of liquor licenses. Each of these measures merits the serious attention of this committee and the full Legislature. The one-time federal appropriation of \$100,000 secured by Representative Tom Osborne for increased law enforcement in Whiteclay is a welcome beginning, but does not adequately meet the needs. The state patrol has estimated the cost to provide adequate law enforcement in Whiteclay at \$250,000 per year. We recognize that LB 530 provides neither money to ensure adequate law enforcement in Whiteclay nor guidance to the commission on how to apply Section 53-132 of the Liquor Control Act, which includes adequacy of law enforcement among criteria to consider when granting licenses. However, LB 530 provides intelligent changes to the act, with potentially far-reaching favorable consequences for Whiteclay and other communities across our state. So we urge the committee to advance the bill. I'd

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also like to add that I spoke with representatives of the tribal government, the Oglala Sioux tribe this week, and they intended to send somebody down here to the hearing. The snow prevented that. They asked me to urge you, on their behalf, to support LB 530 and empower the liquor commission with the authority to deal with situations like in Whiteclay. If you have any questions, I'd be happy...

SENATOR JANSSEN: Thank you, Mark. Any questions? Seeing none, thank you.

MARK VASINA: Thanks. I have copies here.

SENATOR JANSSEN: Next proponent, please?

BYRON PETERSON: Senators and committee members, I'm Byron Peterson. I'm a board member of Nebraskans for Peace, and I have been interested in following the Whiteclay issue for a number of years now. And in reflecting back, I am recalling the personal exposure to the skid row situation in Chicago, the Larimer Street situation in Denver, a bowery-type situation in the Twin Cities, St. Paul and Minneapolis, and have heard a lot and read some about a bowery in New York, all notorious kinds of occurrences. And it's my impression that all of those are history. You cannot go to those areas today and find that kind of phenomenon present. The only skid row that I seem to be aware of that continues to operate is one in Whiteclay, and the term "skid row" is not loosely used. There was a sociological study conducted by Marguerite Vey-Miller very carefully analyzing what is going on and has gone on in Whiteclay, and the conclusion of...the use of that instrument, that survey instrument, was that this quantifies as a bona fide skid row. So we as Nebraskans have a skid row in our community, our state. I think everybody pretty much knows about this by now. I just heard, within the last month, on an international news station about Whiteclay. You can pretty well bring up Whiteclay or expect to hear Whiteclay...pretty widely known about it. And I know that there's frustration by those that are pointing this out. I know that there's frustration by us, we as Nebraskans, that we have this in our state. This is in our state. I have shared information, pictures and the like, with various parties that are responsible and able to relate to this. And this includes the liquor commission, the highway patrol, the sheriffs, the department in Sheridan

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County, and certainly the tribal government and the patrons in Whiteclay. This is almost like a swamp. We don't know how to get ourselves out of it. We don't know how to deal with it. It just kind of goes on and on and on. And from the perspective of the law enforcement, I'm recalling a situation. I called Sheridan County to come up and assist a person who was lying, passed out, wet, on a cold cement surface in freezing temperatures. And I timed the amount of time that it took for them to get on the scene to intervene on this, and it took a full half hour. It came up, pulled his car up, and here's a person that is totally passed out, large, wet, and would be considered a mess. And he said, oh, Byron, if you care so much about this, why don't you pick him up? And I said, well, you know, it's not in my jurisdiction. It's yours. And it's happening in Sheridan County's jurisdiction, it's happening in our jurisdiction. And we need to be able to do something about it. And I think we've wanted to do something about it, it's just that we haven't had the tools. From my quick listening and surveillance of this particular bill, it sounds like this is a good step in the right direction, and I would encourage all of us to go for it, big time.

SENATOR JANSSEN: Would you please spell your last name?

BYRON PETERSON: Peterson, P-e-t-e-r-s-o-n.

SENATOR JANSSEN: Well, I knew you were either a Dane or a Swede, so... (Laughter)

BYRON PETERSON: Swede.

SENATOR JANSSEN: You're a Swede, s-o-n. All right. Are there any questions? Seeing none, thank you. Next proponent, please?

SUSIE DUGAN: Senator Janssen, members of the committee, my name is Susie Dugan, D-u-g-a-n, and I am here on behalf of PRIDE Omaha, Inc., an organization dedicated to preventing the use of alcohol, tobacco, and other drugs by young people. I will, in the interest of brevity, just urge you to pass LB 530, and we would strongly oppose the Moylan amendments, as proposed. Thank you.

SENATOR JANSSEN: All right. Any questions? Thanks for

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being here today, Susie. Next proponent?

JACK CHELOHA: Senator Janssen and members of the General Affairs Committee, my name is Jack Cheloha, last name spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha, testifying in favor of LB 530. On behalf of one local government, we would appreciate the substantive changes on pages 2 and 3 of the bill. We think that this would help, you know, empower local governments as another factor to consider as they make recommendations on liquor licenses, and then also it would be a good factor also for the Liquor Control Commission. And we do support changing the language from "shall" to "may" likewise on the issuing of these licenses. Roughly--in Omaha right now we have 1,011 liquor licenses, and so it seems like it fits, you know, within some of the statistics I heard earlier, per capita, et cetera, and for those reasons, we support LB 530, and I'll try to answer any questions.

SENATOR JANSSEN: Any questions? Senator Connealy?

SENATOR CONNEALY: Thank you, Senator Janssen. Jack, could you give an example of what, you know, the interaction with the commission and where you don't get satisfaction sometimes, that you think that they don't have enough power to do?

JACK CHELOHA: Well, for instance, if we review a license that's up for renewal and have had numerous law enforcement calls to that location, we may go ahead and recommend nonrenewal or make them go through what is called, I think, the long form. I'm somewhat of a novice on this stuff, but those are terms of ours that I'm somewhat familiar with, and we'll do our part. And then as it goes up to the Liquor Control Commission, it seems like, you know, they'll consider what we do locally and our recommendation, as one of the factors that they take into account. Not so much the only factor, but just one them. And typically, either they'll feel like their hands are tied and they have to grant the renewal, or a new license they have to grant the license. If not, you know, then it goes on to court, as you've heard about that procedure. So those are just some of the frustrations. For local governments, we're only one of the factors that are considered when the licenses are granted.

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SENATOR CONNEALY: Thanks, Jack.

SENATOR JANSSEN: Any other questions? Jack, you mean if the city of Omaha would deny a license and it goes to the Liquor Commission, they will approve it, then?

JACK CHELOHA: Well, I'm not saying automatically, but...and they do take into account what the local government has recommended, but sometimes, due to the other factors that are, you know, issued...you know, obviously, I work for local government, so we would like to think that, you know, in terms of location and issuing licenses and problems, that we have a first-hand knowledge and understanding of what the problems are, and we'd like to think that, you know, our recommendation should carry more weight than some of these other factors that are considered. That's all. That's all I'm saying.

SENATOR JANSSEN: Well, if you deny...if the city of Omaha denied a license, and that request went and they appealed to the Liquor Commission, it's quite possible that they would deny it, also; isn't that correct?

JACK CHELOHA: That true, too. They could deny it as well.

SENATOR JANSSEN: I mean that...it's local control, to a certain extent, but the commission still has the final say?

JACK CHELOHA: Absolutely. And that's why I think it's even more crucial to change that wording on page 2 from "shall" to "may," especially on new licenses.

SENATOR JANSSEN: Okay. Senator Erdman?

SENATOR ERDMAN: Thank you, Mr. Chairman. When the city of Omaha--and I'm assuming that they've probably recommended not approving a license or not granting a license--when that decision is made, is there adequate information that's submitted to the commission? I think Hobie testified that sometimes the local government will say, we do not recommend this, but not have the supporting information. What is the process that the city of Omaha goes through to make that recommendation?

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JACK CHELOHA: I would say in Omaha we have the benefit of having a larger, you know, city staff and a full-time city clerk's office that deals with liquor licenses and the volume that we have. And so when it comes...a recommendation comes from Omaha up to the commission, et cetera, we follow it through. We send one of our deputy city attorneys typically, to follow the case, or to work with them, and also our city clerk staff. Whereas smaller communities may not have the advantages of a larger community like we do. And so for those reasons, I'm not sure the commission feels...you know, they're left doing the work on their own as much, when it comes to a big city, as they do some of the smaller ones that just don't have the staffing.

SENATOR ERDMAN: Okay.

SENATOR JANSSEN: Any other questions? Senator Wehrbein?

SENATOR WEHRBEIN: Do you have a record of your success of denial or approval with the Liquor Control Commission from the city of Omaha?

JACK CHELOHA: I don't have one with me. I could make some attempts to get that for you, if you'd like to see it. Either that, or maybe the commission itself may have those, you know, appeals from the city of Omaha jurisdiction, too.

SENATOR WEHRBEIN: I'd be interested in some of that. I hear this complaint for the last 30 years, but I don't know what the percentage is.

JACK CHELOHA: Sure. Right, okay.

SENATOR JANSSEN: Any other questions? Thank you, Jack.

JACK CHELOHA: Thank you.

SENATOR JANSSEN: Next proponent? Any other proponents? How many proponents do we have left? Mr. LaMere, I believe, is the last one.

FRANK LAMERE: Hello, Mr. Chairman, members of the committee. I appreciate the opportunity to have a chance to share some things with you today. My name is Frank LaMere.



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I am from South Sioux City, Nebraska, and I'm a member of the Winnebago Tribe of Nebraska.

SENATOR JANSSEN: Frank, would you spell your last name, please?

FRANK LaMERE: L-a-M-e-r-e. You know, just for a real brief background for those on this distinguished committee who may not have been here in the recent past, I want to point out that this issue has come before us since 1998, and I have the distinction, the privilege of having had a long experience with it, in working for positive change for Nebraska, our people, and our relatives and neighbors on the Pine Ridge Indian Reservation of South Dakota. I dare say that my experience with it has taught me quite a lot. It has taught me, I think, most of all how to take frustration and to try to turn that into something that can be beneficial, using that energy in ways that can make things a little bit better for our families, our communities, and our state. So I wanted to share that with you. My experiences with this has been long, for about six or seven years of working for change, I dare say, Mr. Chair, and I want to remind the committee that I'm ready for another six or seven. I want to share with you...I do not want to again repeat some of the things, but I just want to share with you something I think is very important. There was a great legal scholar by the name of Felix Colon, and he was a great legal scholar having to do with Native issues in Indian law in the early part of the 19th century--excuse me, in the 20th century. And Felix Colon at one time, when speaking of Native Americans and their issues and problems, said that Native people are like the miner's canary, and that what besets Native people will be a bane to all of us in the near and distant future. And I'm encouraged when I come here today, and I have come here for a number of years to see these very ambitious and committed statewide groups who are coming here talking about things that are happening in their communities. And I hearken back to what Colon said, because we've come here for a number of years and said, if we do not address the issue of Whiteclay, the lawlessness that surrounds the sale of alcohol there it will soon touch all of us. It will impact all of us. I come here today to remind you of that, and I come here today to lament the fact that as we speak and as we debate issues, and as we talk about philosophy and as we talk about personal choice, our

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children freeze to death on the highways of Nebraska. They freeze to death from exposure in Whiteclay. Our children drink themselves to death on college campuses. They fall off stairwells in fraternity and sorority houses. And I think that is only just a hint at what's really happening in our families, our communities, and across the state of Nebraska. That's something that sometimes I think, Mr. Chairman, we dance around, but that is the reality that we have talked about at Whiteclay for a number of years, those kind of issues that have come before us and have beset us. But they have been ignored, and I am pleased to see that with the introduction of LB 530 that perhaps we are beginning to understand what's happening to us, not as Native children, but as children and others across the state of Nebraska. And I remind you, like most of you, I was born here, and I plan on dying here. And I plan on raising my children and my grandchildren in this state. And so I am hoping that at some point in the near future we can look back at this sad chapter in our history and know that by coming together and by talking and by seeing what's happening, and taking decisive actions, that we indeed change things for our families and our communities. I will simply say that I come here in strong support of 530, and I applaud the committee for bringing it before us. And I want to very publicly today apologize to the Liquor Control Commission. I had come before that body in past years, lamenting the fact that they did not take decisive action at Whiteclay. I spoke to them in terms of what I thought I understood, that they had the horses to meet the need, that they had the authority, that they had the discretion to do something that was going to be good for the people of Nebraska and our neighbors at Pine Ridge. In a very short time, in the last year, they took very clear and decisive action, only to have those actions struck down by a district court. And I applaud their commitment in that regard, and I would ask that they go forward and do the best they can in those court hearings. But I wanted to apologize to them, because all this time I thought they did not have the will or the commitment. But I think that perhaps that's there. Now they need the authority and the discretion that I hope your committee can give them through 530. So with that, I applaud you in your work, and perhaps we will see a day very soon when we can address that issue at Whiteclay once and for all, and put that sad chapter in Nebraska history behind us. So with that, Senator Janssen, I thank you for your

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time, and it's always a pleasure.

SENATOR JANSSEN: Any questions? Seeing none, thank you, Frank, for being here today. Next proponent, please? How many more proponents are there? I believe this is the last proponent.

JUDI MORGAN gaiashkibos: Thank you, Senator Janssen and committee. I will be brief, as well. I rise in support of LB 530, and for the new junior senators that are here today, I welcome you to this lasting, unfortunate...

SENATOR JANSSEN: Judi, would you please pronounce your name and spell your name?

JUDI MORGAN gaiashkibos: Oh, okay. I'm sorry. Once again I'm assuming some of you know who I am, and others don't. I have been the executive director of the Nebraska Commission on Indian Affairs for the past nine years and have been dealing with Whiteclay for that long. My name is Judi, J-u-d-i, Morgan, M-o-r-g-a-n, gaiashkibos, g-a-i-a-s-h-k-i-b-o-s. That's Ojibwa for cutter. My husband is Ojibwa from Wisconsin. I am a member of the Ponca tribe of Nebraska, and I am also Santee Sioux, and I am a mother of children, and I am a citizen of the state of Nebraska, and I am also a citizen of a sovereign nation, the Ponca tribe within the state of Nebraska. So as you look at LB 530, I think it's a good point in time to stop and reflect on the uniqueness of Indian people, and that on the reservation in South Dakota at Pine Ridge, the Indian people there aren't afforded the right to purchase and buy liquor. However, in the state of Nebraska, that is not the case. I as an Indian person in the city of Lincoln can do that. But we're really not here to debate that issue. I guess I'm here today to speak more of is why is LB 530 something good for you all to support. Clearly, I would say a previous testifier talked about the ratio of licenses to citizens, and when I calculated and did my math, that went three liquor licenses to 14 individuals, about a ratio of one to five. I think that's not a very good ratio of the number of licenses for people living in a community. So I would arise in support of LB 530, so that we can deal with the liquor commission having more discretion in issuing licenses based on the population, based on the local governing body's input, based on the need, based on the number of licenses'

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impact to the community, also keeping in mind, based on the fact that the citizens that are impacted, the Indian people across the border, two miles across the border, that are negatively impacted. I have always said, over the years, that if it were the opposite and if we had three Indian individuals having licenses, let's say down on the southern border in Nebraska, and that maybe were Iowa Indian people, and they were selling this amount of liquor, and it was resulting in deaths of white people, and a horrid impact to those communities, I think this issue would have been dealt with a long time ago. So I definitely would have to say that, unfortunately, in the state of Nebraska there is racism and economic racism still alive and well today. As the director of the Indian Commission, I have testified on numerous occasions before the liquor commission, before this committee, and as Mr. LaMere alluded to, this is an ongoing battle lasting, in my life, at least nine years, and I hope that I don't have to be here nine more years to testify about this. I hope that this legislation before you that addresses the abuses in communities throughout the state, will finally have the support to give that equity, that oversight, that compliance, to our Indian children, along with all citizens of the state of Nebraska. Therefore, I urge the committee to give this good consideration and debate, and move this to the floor for everyone to become more aware of the issues and to help address this very sad state of affairs in the state of Nebraska. Thank you very much.

SENATOR JANSSEN: Thank you, Judi. Any questions? One remark, Judi. If you're back here in nine years, none of us will be here. (Laughter) All right, thank you. Next proponent? Seeing none, we'll go to opponents. Any opponents? Okay, I want to read a letter as a opponent. It comes from Mr. Jim Otto, and he is registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association. (Exhibit 10)

TIM KEIGHER: Good afternoon, Chairman Janssen and members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r. I appear before you today in opposition to LB 530 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I guess after listening to the proponents, one proponent pretty well summed up my opposition. He's looking at limiting competition. We feel

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that this will put members who build a new store at a disadvantage if they're not allowed to get a liquor license to compete with other retailers, whether they're in the convenience store industry, the grocery industry, big box stores, whatever, that have retail liquor licenses. So I'll keep it brief, and that's my opposition. I'll be happy to try and answer any questions.

SENATOR JANSSEN: Any questions? Senator Wehrbein?

SENATOR WEHRBEIN: You struck me. Can you...if I wanted to buy, put up a station tomorrow, can I do it, to sell petrol, fuel?

TIM KEIGHER: Sure. I mean...

SENATOR WEHRBEIN: All I have to do is find...

TIM KEIGHER: ...providing you meet the regulations of the Fire Marshal's Office and safety.

SENATOR WEHRBEIN: But I would have no trouble finding fuel?

TIM KEIGHER: No. A supplier?

SENATOR WEHRBEIN: No franchise problem? No spot market? I could simply go out and start tomorrow, as long as I had...

TIM KEIGHER: Sure, and if you're interested, I could find one that's probably for sale for you. You wouldn't have to go through all that trouble. (Laughter)

SENATOR WEHRBEIN: No, no. No, I want to start a new one.

TIM KEIGHER: Yes, I mean, my members are opening new ones all the time. My members are supplying individuals that are opening new ones all the time.

SENATOR WEHRBEIN: Applying to who?

TIM KEIGHER: I'm sorry?

SENATOR WEHRBEIN: Applying to who?

TIM KEIGHER: They're opening new locations.

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SENATOR WEHRBEIN: I thought you said they're applying.

TIM KEIGHER: Oh, I'm sorry, I missed...

SENATOR WEHRBEIN: Okay, so there's absolutely no restrictions for anybody to get into the service station business?

TIM KEIGHER: No. I mean, suppliers are prevalent out there.

SENATOR WEHRBEIN: Okay.

SENATOR JANSSEN: Senator Fischer?

SENATOR FISCHER: The restriction would be like a C store that would need to get a liquor license in order to sell liquor at a C store with a gas station, right?

TIM KEIGHER: That's our opposition to this bill, yes. So you build a new facility and you're not able to get a liquor license, when all of the retail competitors that are selling fuel and other products you're selling are able to sell alcoholic beverages, and you're not.

SENATOR FISCHER: Thanks.

TIM KEIGHER: Um-hum.

SENATOR JANSSEN: Tim, if, you know, if there were five service stations within a, say a three-block area, and do you believe that someone would want to come in and open up a new one, just...or do you think that would be a saturation point?

TIM KEIGHER: Well, I think they would look at it as, is it the saturation point for selling gasoline, alcohol, cigarettes and other products they sell. And if it wasn't a saturation for, as an example, the gasoline, they need the other things to be able to compete with those that have access to those products.

SENATOR JANSSEN: Um-hum. Now you still had to have, if you wanted to open a convenience store, you still have to go

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through...you have to make an application to the city, correct?

TIM KEIGHER: Correct, um-hum.

SENATOR JANSSEN: Have all retail operations such as you represent, have they all been successful in getting a location? Has the city ever denied one of those?

TIM KEIGHER: I don't have knowledge of that statistic, no.

SENATOR JANSSEN: Saying that there's too many, you know, there would be too many service stations in that area?

TIM KEIGHER: Not that I'm aware of, no. Not that I'm aware of.

SENATOR JANSSEN: Okay, thank you. Senator Wehrbein?

SENATOR WEHRBEIN: Well, I had another question, then. If...is gasoline fair traded? Could I open up a station and charge whatever I wanted?

TIM KEIGHER: Sure.

SENATOR WEHRBEIN: Well, I wouldn't have to charge a minimum price?

TIM KEIGHER: Right. There is no dictation on the price that you have to sell, no below cost or minimum markup on gasoline in the state of Nebraska.

SENATOR WEHRBEIN: I thought...well, there was a bill in here a while back that...

TIM KEIGHER: There was a couple years ago. We introduced it and it was shot down very quickly.

SENATOR WEHRBEIN: Okay. My memory isn't all gone, then. Thank you.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Tim. Next opponent, please?

KATHY SIEFKEN: Chairman Janssen and members of the

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committee, my name is Kathy Siefken, Kathy with a K, Siefken is spelled S-i-e-f-k-e-n, and I'm the executive director of the Nebraska Grocery Industry Association, and we're here in opposition to this bill, for a number of reasons. However, there is one aspect of the bill that we do like, and that is the electronic filing, and allowing our members to electronically pay for the licensing as Hobie had mentioned earlier in his testimony. But that's about the only part of this bill that we really do like. Everyone has been--not everyone--some of the proponents have mentioned density. Density is not mentioned in this bill. Even if it were based on a ratio, that's not something that we would like, simply because we believe that this should be market driven, and if you get too many retailers of any type in any one area, some of them will go out of business. Specifically, one of the concerns we have is one page 2, line 12, changing the "shall" to "may." While it sounds like the intent is to give the Liquor Control Commission flexibility, what this really does is it opens up the gate, so that the Liquor Control Commission doesn't have to adhere to any of the criteria that have already been established. That criteria was established so that people met certain levels, certain levels of responsibility. And if you met the criteria, then they couldn't refuse you a license based on the color of your hair, or the color of your skin, or whether they liked you, or whether your son-in-law was the guy that has the existing business. And that's why that criteria, I believe, was established. And so if you change this from a "may" to a "shall" you basically wipe out the criteria, because then you give the Liquor Control Commission absolute authority to say yes or no, based on whatever criteria they want, not what's in state statute. Now let me go back for a minute and say that the current Liquor Control Commission that we have, we think they do a very good job. We think they're very fair. And so I don't want anyone to interpret my words as saying that they're not doing their job. They do a good job. But we don't know who we're going to have on that commission in five years or in ten years, and that causes a concern. I think when you have state laws, it should be something that we can all live with and not worry about who sits in that position, or who's in that chair. I think you need about whether people are going to be treated fairly. And while we do have a good, fair Liquor Control Commission and an executive director, that doesn't mean that it will always be that way. That's a major concern that we have.



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And then when you go to page 3, specifically line 12, what this says is that the Liquor Control Commission would be able to refuse a liquor license based on whether a license could cause an increase in violations. That's every liquor license that's ever given. Any liquor license that's given out, there could be a problem. There could be a violation. I think this is just bad language. When you open it up, you're basically saying that the only people that get to make a decision here is the Liquor Control Commission, and it's wide open and they can do anything that they want. Another concern is when you limit...and what this language will do, is it will limit the number of licenses that will be given. And when you limit licenses, we will go back to a point where the liquor license, the value of the liquor license, is higher than the value of the business. When you're paying that much money for a liquor license, just to open the doors...we've heard about how risky business practices are brought about. Well, when you're paying that much money for a liquor license, you have to make a profit some place. And again, you could be promoting risky business practices, where they start promoting the bar crawls and the birthday bashes and all of that stuff. So I think that as a result of just those two sections, we're really concerned about what this bill does and how wide open it really makes the laws. And if you have any questions, I'd be happy to try to answer them.

SENATOR JANSSEN: Any questions? Senator Friend?

SENATOR FRIEND: Thank you, Chairman Janssen. Kathy, notwithstanding the language problems, I'm trying to come up with a hypothetical, or give me your best guess. If language like this passes, if the green copy passes; you know, we get through, you know, the whole process, based on your experience, or maybe someone else would want to field something like this, the Liquor Control Commission takes language like this, goes up to Whiteclay and does what with it? And it's all over. Because...and before you answer that, because this language, I've been thinking the whole time that we've been sitting here for, you know, over an hour, trying to say, this is something we can use as a hammer to go get...everybody wants to clean that garbage up up there. The problem is, does this do it? Is this the hammer that's needed, in your opinion? And I don't mean to put you on the spot. I'd ask that to anyone, but I'm in

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a...I'm not seeing it here in this language. It's too vague for me right now.

KATHY SIEFKEN: And I agree with that. When I first read this bill, I didn't think Whiteclay at all, and that is a horrendous situation up there. And I don't have the answers to how you fix that. But when I read this, Whiteclay doesn't come to mind at all, because what this bill would do is, it would limit the number of licenses. However, that doesn't seem to be the problem in Whiteclay. They have a problem with alcoholism that needs to be addressed, and I'm not sure that if you even restrict the number of licenses from the current three down to two or one, that that's really going to change the basic problem or meet the need that they have up there. I don't see that this takes care of that problem.

SENATOR FRIEND: Okay, and now I don't want to set Whiteclay aside, but let's talk about the other implications of language like this, just for a second. I've agreed with a lot of the testimony that's come up here, but yours makes sense as well. Isn't where we're going right now is that it's convoluted enough that it's causing some questions? Could you talk about maybe something that would make a little more sense to you folks, or maybe Tim's group; I mean, people putting their heads together and saying, hey, this is something that the liquor commission, you know, we could deal with? I guess what I'm saying is, where's the middle ground here?

KATHY SIEFKEN: I think there might be two different angles that you could use to address that problem. Number one, the criteria is already here. Apparently, that criteria isn't enough. So add to the criteria. Make the criteria tougher. And I don't know...I don't know exactly what the need is, because I'm on the other side of it. I know that when my grocery stores open up on the outskirts of town, their need is to have a liquor license, and what this bill does is it puts that need in jeopardy. But if you could somehow come up with maybe stricter criteria, so that those problem bars aren't allowed to get a license to begin with. And it's not a judgment. You don't leave it up to someone's judgment as to whether they're going to be a good licensee or a bad licensee. How do you know they're going to be good or bad until they've proven themselves? So, I mean, what this does

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is it sort of predetermines, well, you're going to be a good retailer, and you're going to be a bad one, so we're not going to give it to you. That just doesn't seem right. And so again, on the criteria end. And then the other thing is, if you've got a bad retailer, then address it on the penalty end. And by addressing it, you know, I have a tough time saying yeah, increase the penalties on retailers. If you increase the penalties on the bad retailers, that will take care of them. But don't hurt the good retailers that are trying, in the process. So an example would be, right now we've got, in state statute, we've got a law that says that the Liquor Control Commission can go back four years, as a look back on violations. Well, I think that four years is enough, but on second offense of selling to a minor within a four-year period, it's an automatic 24-hour close. And perhaps what you could do is when the violations get to a point to where you know you've got a bad retailer, then you don't go to a 48-hour close, maybe you go to a 72-hour close. And you've got their attention. As a matter of fact, that will probably put them out of business. Because once those people leave a place of business, it's tough to pull them back in. But I mean, you know, if you've got 10 violations in 10 months, it's time to do something. And we don't want those bad actors out there. The good retailers don't want the bad people out there any more than the Liquor Control Commission does. And so there are two different ways that you could address the problem that I'm seeing here. Now I don't see this, again, I don't see this as a solution to Whiteclay. This does not--I don't think it addresses Whiteclay, and my solutions also don't address Whiteclay. But then, you know, I represent groceries, so that's really not my area of expertise.

SENATOR FRIEND: Thanks.

SENATOR JANSSEN: Any other questions? Kathy, I have a couple. First of all, their council tells me there are lots of court cases that do not allow the kind of arbitrary decisions that you've been talking about. And if you look at the way the bill reads, you know, you also have to have the recommendation of the local governing body, right?

KATHY SIEFKEN: Yes.

SENATOR JANSSEN: Okay, and if there's an existence of any

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citizens' protest made in accordance with that section. So...and the nature of the neighborhood, the community, and the location of the proposed license on the premises, and the projected growth, the projected growth of any city, county, or village. If the commission sees there is going to be projected growth...I know you're talking about a new location. Somebody wants to build a big grocery store. That criteria is in there, that they have to take into consideration. We all know what's happening in south Lincoln, and western Omaha. We've had to change some license structures in the past to allow certain growth in an area where a supermarket or a shopping center goes out, way ahead of the population growth that's going to that area. We've made adjustments in those cases, several times. So these are all the things that the liquor commission will take into consideration, along with the...either, if it's a county government or the city government. Yeah, and to me, that goes a long way. And it does not say...it says, they "may." Or they "shall."

KATHY SIEFKEN: But they also have, when you change the "shall" to a "may," they don't have to stick to the criteria that's already been established. They don't have to. They can take those things into consideration, but they may decide, ah, but he looks like a bad actor, so we don't want to give him a license, and that's where I'm saying, I don't think that's right.

SENATOR JANSSEN: You know, I don't think they'd be on the commission very long if that was the case.

KATHY SIEFKEN: But they...well, that may well be the case. You still open...you still would be passing a law that would allow people to do that.

SENATOR JANSSEN: Do you think...would you be happier if the liquor commission was an elected position, rather than appointed?

KATHY SIEFKEN: I really don't have an opinion on whether it was elected or appointed. My point is if you get a Liquor Control Commission that has an attitude where they need to punish retailers instead of trying to work with them when they make mistakes, then we're going to have problems with this. And like I said, the Liquor Control Commission that

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we've got now is a pretty good commission. They take things into consideration. They weigh things, and they come out with very fair--in my opinion, very fair answers or rulings. I would like to see the criteria that we have right now stay as strong as it is. And I think you weaken the criteria, I think you open things up to a judgment on whether someone is good or someone is bad. And that seems on the unfair side. But you had mentioned local control, and I have to tell you that the city of Lincoln passed a liquor ordinance just this last summer. And we have grocery stores--and this is how the locals get to control things--they still have control of a lot of issues. And what the city of Lincoln did, because they didn't like C stores going into some of the older gas stations that were in town and rebuilding them and putting in liquor and pumps, because it just wasn't--they seemed to think that it was no longer conducive to the neighborhoods that they were going in a revamping. So what the city of Lincoln did was they passed an ordinance that said, you can't have a liquor license if you're within 50 yards of a church, a park, a neighborhood, a residential. Well, that's...or within 100 yards. It is within 100 yards. We have grocery stores that are actually 50 foot from the lot line. So all of our grocery stores are out of compliance with local zoning. Now they're grandfathered in because they're already there, but if a tornado hits them or there's flooding or a fire or anything, there's a question as to whether they would be given a special permit. So the locals still have control. They can pass local ordinances to control those issues. They just have to be a little bit creative about it.

SENATOR JANSSEN: Any other questions? Thank you, Kathy.

KATHY SIEFKEN: Thank you.

SENATOR JANSSEN: Next opponent, please? Seeing no more opponents, anyone in a neutral capacity? Anyone neutral? With that, let's see, would you like to close on that or are you going to go to this one. I'll close on that one. Senator Fischer, will you please vice chair the committee for awhile?

SENATOR FISCHER: Certainly, Senator Janssen. I believe we're ready for LB 562 and I will open the hearing on LB 562, and Senator Janssen is here to introduce the bill,

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please.

LB 562

SENATOR JANSSEN: Good afternoon, Senator Fischer, members of the committee. For the record, my name is Ray Janssen, representing the 15th Legislative District, the "Pathfinder District." It is my pleasure to introduce to you today LB 562. LB 562 adds the gaseous form of alcohol to the state's definition of alcohol under the Liquor Control Act. This bill was introduced in response to the news in the mainstream media that a machine called an AWOL machine--that's alcohol without liquid--was ready to be marketed in the United States. AWOL stands for, as I explained, alcohol without liquid. The machine is being promoted as the new low-calorie, low-carbohydrate way for adults to consume alcohol. The machine consists of an oxygen generator and a hand-held vaporizer. A spirit is poured into the vaporizer and oxygen mixes with the alcohol, producing a mist which is inhaled through the mouth. The alcohol enters the bloodstream through the lungs, rather than through the stomach. According to the manufacturers, once the alcohol enters the bloodstream, it affects the body in the same way as drinking alcohol. The machine manufacturers also have said that alcohol leaves the body in the same manner as if it was consumed by drinking it, so it will register on the Breathalyzer test. The Liquor Control Commission has indicated that this concept is one of their concerns and needs legislative attention. In a letter to the Governor and the committee, the commission states that one of the new technologies issues facing alcohol regulators are the alcohol without liquor devices. Some of the AWOL devices are in a gaseous form at the manufacturer and may not be controlled by this act. An updated definition which includes alcohol in any state is needed. That is why we're here today and we want to add gaseous forms of alcohol to the definition of alcohol under the Nebraska Liquor Control Act to make sure the alcohol without liquid products are subject to the Liquor Control Commission's power to regulate alcoholic liquor. To me, it seems like something that is kind of far-fetched. (Laugh) You know, I don't know whether they have gaseous vegetables or gaseous protein. This is something new to me. I guess maybe I'm from the old school and maybe there is someone here from the commission

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that can explain it a little further or a manufacturer. Like I say, it's new, so we'll have testimony. Madam Chairman, do you want me to introduce LB 563 also? Or I'll come back. Maybe we better just stay on this one bill at a time. Okay.

SENATOR FISCHER: Thank you, Senator. Any questions for Senator Janssen? Thank you. Next, we will have the proponents come forward for LB 562, please?

HOBERT RUPE: (Exhibit 11) I've got a nice handout for everybody on this one. Good afternoon. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. And I guess the impetus behind this bill is trying to keep ahead of the technological curve. You are being passed out a pamphlet that I actually pulled off their Web site of the manufacturer of this device. Alcohol without liquid--I mean, you always have something that comes with a nice acronym so they call it AWOL devices. They started in Southeast Asia, primarily--Hong Kong area, Australia. They moved into Europe. Apparently it is the hot, fun thing to do in London right now. As you can see, what it does is the basic device, you pour a shot into a vaporizer, using a medical vaporizer technology, and then you suck on it through a tube, and supposedly it's a low-carb, low-calorie way to, well, get a little intoxicated. Now, the reason why we just didn't ask for just a ban on these things are, and instead asked just to change the definition to include alcohol in its gaseous form, is I think this is one of those areas where the technology is advancing that perhaps the commission, through rulemaking procedure, can act a little more quickly than legislative devices. Like my concern of these, and Senator Friend I think might be able to testify a little...might be able to recognize this as this might just be step one. Right now, I believe, that if law enforcement operators may check their Breathalyzers using aerosol form of alcohol which mimics the spray. Well, that's what might be the next form of this technology. And unfortunately the Liquor Control Act, which was written in 1935, was aware of liquids and beverages and actually has a part about confections which may be alcoholic, but is silent as to gaseous forms. It's possible that the existing, what we're seeing here in this pamphlet, would be regulable by the commission because it starts off as you are pouring a shot into this nebulizer

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and then it comes out. But I think the best way to keep ahead of the curve is to make sure that the commission can regulate gaseous forms being served and sold in this manner. We're not the only state looking at this. Florida is looking at it, New York is looking at it. You know, there is a whole host of concerns about this technology because it hasn't been around that long. You are basically breathing alcohol into your lungs, having it directly go to your bloodstream, bypassing the body's own natural defense system of a stomach, a small intestine, and a liver and kidneys. And so it is hitting you that much quicker. So that's why the commission is just trying to make sure that we have the authority to legislate and deal with these issues under our health, safety, and welfare statutes, and powers and abilities. And so you've got the handout. This is actually from the people who are trying to convince you that this is a good thing. So I would turn your attention to the FAQ, which is the last...the third part of it, where they recommend that you not be used for more than 20 minutes per hour and then not for more than two sessions in any 24-hour period. Anything that has a warning like that gives me pause. I'm pretty sure that more than a couple people might have had two cocktails last night during the Super Bowl party and might have a glass of wine for dinner, which would be three consumptions of alcoholic beverages within a 24-hour period without any ill effect. With this, where they are specifically warning you, I don't think they know what it does to a person's body. And so the commission is just asking the ability to stay ahead of the curve for public health, safety, and welfare, and to look at these new technological devices and to regulate them in accordance with sound public policy. Thank you.

SENATOR FISCHER: Thank you, Hobie. Any questions? Senator Friend.

SENATOR FRIEND: Thank you. Thank you, Senator Fischer. Hobie,...(laugh).

SENATOR FISCHER: Senator Friend is speechless.

HOBERT RUPE: So was I when I first saw these.

SENATOR FRIEND: Did you go through and...it seems to me, find some model legislation or something happening in



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California or Florida where it would seem like that the logical next step would be, you know, maybe mirroring some of the language that they have in their statutes?

HOBERT RUPE: I didn't look for that. I did look at the House resolution, which was just to ban these particular devices from sales under TTB's authority, the Trade and Tax Bureau's authority. My concern was, is that if you target just one specific technology, you might not...if they change it enough, you might not be able to regulate it there. So my concern was, it's clear that we can regulate alcohol when it is sold and dispensed in liquid form or in a solid form under a confection or candy. We better just...you know, hopefully, we're not going to have to go to every...you know, what other forms are there? Solid, liquid, air. I think we've got most of them except for maybe plasma, but... So that's the reason why we recommended doing it this way. And then to do it through rules and regulations much like we did when there was a problem with upside-down margaritas where we were able to regulate those, you can't serve alcohol unless it is going first to a glass before you are pouring it into somebody's mouth. So we feel that it... You know, I actually think right now, the way this is served, we probably...it's an argument we have, the authority to regulate the rule and regulation. But my theory is, why take chances, especially they might then change the technology on us and keep evolving.

SENATOR FRIEND: I guess the thing that occurred to me though, is if you didn't change any of the language, wouldn't...and I'm not presuming anything...but wouldn't implementing any of these type of...this paraphernalia, and actually going about, you know, I guess, using this gaseous alcohol, it would technically be a controlled substance. It would be illegal, wouldn't it? I mean, would it not, from a criminal code standpoint, fall under... There would be some problems with using that right now in the state of Nebraska.

HOBERT RUPE: There might be. I have not looked at it from a criminal standpoint, but I am aware that there might be some issues from some of the antihuffing right regulations which might apply to that anyway. My theory was, is the best way to do it and the quickest way to do it, and to keep ahead of them, since the particular technology currently is being marketed as to sell at bars. I mean, the cost is

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somewhat prohibitive from an individual buying it for personal use, perhaps. I mean, we might want to look at that. Or, you know, if we just make...you know, if the commission then feels that...(inaudible)...we...that they shouldn't be sold that way, too, to be used for that purpose, you know, I think the commission would have it so long as we could regulate alcohol as being sold or marketed in a gaseous form. You know, I just was trying to get...you know, when we first approached this and I was approached by Ms. Lage, you know, I tried to draw the broadest...cast the broadest net we could to keep ahead of the changes they might put into it. But that was my approach and I really, until somebody brought this up the other day, I hadn't thought about the possible criminal aspect of it on that. I was more worried about that some college-aged bars would be getting this stuff in here and it would just be increasing the high and dangerous usage among that clientele, because that's who this is clearly marketed at.

SENATOR FRIEND: Right. Thanks.

SENATOR FISCHER: Other questions? Senator Wehrbein.

SENATOR WEHRBEIN: I may have missed it. Do you know how widespread this is in the United States?

HOBERT RUPE: It's coming in much like any other fad from overseas. It is hitting the coasts and then it's starting to percolate into the center of the country. I am aware of an inquiry in Iowa. They were trying to get a bar in Iowa City interested in this, much the same situation as we would have here in Lincoln--a college-aged demographic of alcohol consumption. There was inquiries being made in the Denver, Colorado, area. I personally received a phone call and where a person left a message for me, inquiring about them, and I returned his call two or three times and he has not gotten back with me. Maybe he has figured out what side of the issue I would be on, but that's the only inquiry I've gotten there. I know that they are in New York. They've been trying to get them in some of the bars in New York, and there's been...this issue has been raised in some other states. I know Florida, the legislature is dealing with it currently. I think they're going to the route of just a ban, saying AWOL devices are banned, where as I am thinking, trying to...whereas the proposal from the commission thought

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would be, just so long as we put them underneath the Liquor Control Act, then we could do it through sound regulation and sort of keep ahead of the technological curve a little quicker.

SENATOR WEHRBEIN: Well, it looks like, to me, with a quick reading of this though, it's actually much more risky and dangerous. I mean, two per 24 hours. I mean, people are going to abuse that instantly.

HOBERT RUPE: You know, I think it's going to be abused. And my problem with this device in particular is the message that this sends is, absent the spin of no carbs, no calories, no hangover...you know, by the way, the no hangover theory works because you are taking your...you've got to remember, your body reacts to alcohol like a poison. It filters it through its normal digestive system, kidneys and liver. It's bypassing your own body's safeguards in a lot of ways. It sort of takes the social aspect of consuming alcohol out of the way. The most of the way these things work is you pay \$10 to put a shot in this stuff and then you breathe it in through a tube. You know, it's not the same as spending, say, \$10 for a fine cocktail or a glass of wine and sitting there conversing with somebody over a table for 20 minutes. You are sitting there sucking on a tube for 20 minutes trying to reach a point of inebriation. So I think the purpose behind these devices is clearly aimed at a certain demographic and which is already strongly at risk for abusive alcohol practices.

SENATOR WEHRBEIN: Would you say this would give you the authority to ban it completely?

HOBERT RUPE: I think it would. I think if we can regulate and the sell of gaseous forms through rules and regulations similar to what we did on our rule and regulation prohibiting the upside-down margaritas, which were a similar situation. You know, how drunk can somebody get real quick? Well, if you pull your head back and somebody pours two shots down your throat, the same idea here would apply where we're trying to regulate abnormally risky behavior in the use of alcohol.

SENATOR WEHRBEIN: Thank you.

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SENATOR FISCHER: Other questions? Thank you very much.

HOBERT RUPE: Okay. Thank you very much.

SENATOR FISCHER: Other proponents, please.

SIMERA REYNOLDS: (Exhibit 12) My name is Simera Reynolds and I'm the executive director for Mothers Against Drunk Driving. And I'm going to try to skip through here so I don't repeat everything, but alcohol without liquid allows users to inhale alcohol in a mist form bypassing your normal liver, kidney, et cetera. It takes 20 minutes to inhale one shot of alcohol, so generally, a BAC level may stay low while intoxication levels may be higher. And there is currently there is no real scientific research that's been done on this product as far as how it works and how it works with the body and how it works with the bloodstream and how it would report out for a BAC. The alcohol without liquid vaporizer is currently being marketed to nightclubs, bars, private organizations, as a way to consume alcohol. But MADD sees this device as a tool to free-base alcohol. It's changing the social intent of alcohol from a beverage to a drug concept. And I've talked to several DRE experts across the state, asking them their opinion on this. And some say they would view it as an inhalant, which maybe, Senator Friend, that's what you were getting at. But then others say, no, it's a depressant. And so I think there is...how law enforcement would approach was the...I got several different answers, and maybe turning it into a gaseous form would answer some of those questions. However, I don't know...I mean, you...this committee would be in a better position to address that. The strong concern that MADD has regarding the alcohol without liquid is that it bypasses everything and it creates a hit that is ten times more potent than by drinking the same amount of alcohol--ten times. The user could have a BAC level well above the legal limit despite being drunk while driving. Additionally, medical experts have indicated they believe that inhaling alcohol could cause serious brain damage. And I really think that this is where the scientific research needs to come in. We don't actually know what it does to the brain because it bypasses the filter systems, and the filter systems in our body allow for the opportunity to take out many of the toxins that cause alcohol poisoning. There is something else Hobie said that I wanted to address but I'll

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have to think on it. Alcohol without liquid has the potential to impair driving ability while still allowing the user to bypass a Breathalyzer test. Oh, I know; it's that, you know, we talked about it is being marketed to nightclubs that's on the east coast, west coast, you know Iowa here. But I'm here to tell you that I have heard it is in Lincoln, Nebraska. So it's not something that... And another thing that I have heard, it's anecdotal, is that it's a \$3,000 instrument. And when a bar owner goes in and pays \$3,000 for an instrument that you can only use two times in a 24-hour period, how many times are they going to have to get people to utilize this instrument and then...I mean, we go into high-risk behaviors again. And then it's just sidestepping different values that we've already set standards for. MADD obviously has a serious concern regarding safety for the public. A standard drink is typically a 12-ounce beer, a 5-ounce glass of wine, 12-ounce wine cooler, a shot and a half...or 1.5 ounce of 80 proof distilled spirits, which contains all the same amount of alcohol. But MADD believes that all alcohol products should be subject to the same responsibility standards. And the AWOL would not subject...we don't know. We don't know what it would do. So I strongly support LB 562, defining it out so that the Liquor Control Commission has some authority to ban it and stop it, and I would thank you for your consideration.

SENATOR FISCHER: Thank you. Questions? Senator Cornett.

SENATOR CORNETT: Do you have any scientific data in regards to this at all?

SIMERA REYNOLDS: None. It just recently came out of Australia, and I think some of the manufacturers also might come out of the United Kingdom.

SENATOR CORNETT: Well, I know that alcohol is normally ingested through the stomach and then absorbed and it takes a period of time for that alcohol to be absorbed so your alcohol level rises gradually. With this, I'm sure it's just all at one time. But how then is it eliminated?

SIMERA REYNOLDS: Well, you know, it does...I'm not quite sure because it goes through the mucus membranes of your nose or through your lungs, and then gets to your brain.

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SENATOR CORNETT: I know it would still be in your bloodstream, but we don't have any rate of elimination or...

SIMERA REYNOLDS: And it will get in your bloodstream, but I'm not quite sure. And that's where, when I talk to law enforcement on some of their views, especially DRE...

SENATOR CORNETT: Unless something can be both a depressant and an inhalant at the same time.

SIMERA REYNOLDS: Right. But they still didn't understand quite how the elimination process and how the lowering of the BAC would take place. Would it still mimic what we know, that...

SENATOR CORNETT: Well, I was going to say, I could see significant brain damage.

SIMERA REYNOLDS: Right.

SENATOR CORNETT: Okay.

SENATOR FISCHER: Other questions? Thank you. Next proponent, please.

MARY CAMPBELL: Vice Chairman Fischer, members of the General Affairs Committee, my name is Mary Campbell, C-a-m-p-b-e-l-l, representing the Nebraska Wholesale Liquor Distributors Association, and providing proponent testimony on LB 562. When the members of our association, which Walt Radcliffe also represents along with me, when our members got wind of that...if that's a proper way of phrasing it...of these products, they made known to us that they had no intentions of distributing them in the state of Nebraska, and we made sure that that was communicated to the Liquor Control Commission, as well. We would prefer that people who enjoy alcoholic beverages would continue to do so responsibly and in the old-fashioned way. And obviously I can only speak for the membership of this association, but should others choose to try to bring these products into the state, then we certainly support the intent of the bill, that it come under the jurisdiction and enforcement of the Liquor Control Commission.

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SENATOR FISCHER: Thank you, Mary. Any questions?

MARY CAMPBELL: Thank you.

SENATOR FISCHER: Thank you very much. Any other proponents?

DIANE RIIIBE: (Exhibit 13) Good afternoon, Vice Chair Fischer and members of the committee. My name, again, is Diane Riibe, R-i-i-b-e, with Project Extra Mile. And we are here in support of LB 562, and in the interest of time would just share with you that several states are actually looking at banning the product currently with legislation. Suffolk County in New York is the first municipality to actually ban the sale, purchase, and use of the product. We would encourage the commission not only to have jurisdiction over regulating it, but would encourage the banning of the product, as well, so we don't have to worry about the issues in the future. So those are our comments. Thank you.

SENATOR FISCHER: Thank you. Any questions? Thank you very much. Any other proponents?

JIM MOYLAN: Jim Moylan, M-o-y-l-a-n, appearing on behalf of the Liquor Retailers Association, again. We pretty much support this bill. Let's bring it in out of the clean air and put it under the Liquor Control Act and then they can make decisions over the years how to either regulate it or to ban it. Now, if it gets to the place where you know it's going to be in neighboring states and taking business across the border, you know, they might want to just regulate it. If it's not coming fast enough, then they might want to ban it. But I support just giving the authority to the Liquor Control Commission to decide how to handle the issue. Any questions, I'd be happy to answer them.

SENATOR FISCHER: Thank you. Any questions for Jim?

JIM MOYLAN: Thank you.

SENATOR FISCHER: Seeing none, thank you very much. Other proponents?

SUSIE DUGAN: Senator Fischer, members of the committee, my name, again, is Susie Dugan, D-u-g-a-n. I'm with

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PRIDE-Omaha Incorporated. And we, too, would like to go on record in support of LB 562. Thank you.

SENATOR FISCHER: Thank you. Questions? Other proponents? Are there any other proponents? Any opposition to LB 562? Anyone who would like to testify in a neutral capacity? Would you suppose Senator Janssen would like to waive his closing? There he is; you're hiding back there.

SENATOR WEHRBEIN: Low profile (inaudible) over there.

SENATOR FISCHER: Did you want to close on LB 562?

SENATOR JANSSEN: No, I'll waive closing on that and open on LB 563.

SENATOR FISCHER: Thank you. Closing has been waived and so we will close the hearing on LB 562. Next we need to open the hearing on LB 563, and Senator Janssen is here to introduce that bill.

LB 563

SENATOR JANSSEN: Thanks, Senator Fischer. For the record, my name is Ray Janssen. I represent the 15th Legislative District and I'm here to introduce LB 563. This bill adds flavored malt beverages to the Nebraska definition of beer. On Wednesday, December 29, 2004, the Alcohol and Tobacco Tax and Trade Bureau announced the final regulations regarding flavored malt beverages that had been made. The flavored malt beverage and related regulatory amendments were printed in the Federal Register on Monday, January 3, 2005. We covered this topic in the General Affairs Committee in an interim hearing which was held last December. At that hearing, the TTB still had not issued new regulations on flavored malt beverages. Much of what was discussed at the hearing is now outdated. The regulations state that in order to be taxed and treated as beer, 51 percent or more of the alcohol in flavored malt beverages has to be the product of brewing. No more than 49 percent of alcohol may come from other flavoring, which would be through the process of a distillation added to that product. This regulation would allow only half the amount of the added distilled spirits and alcohol flavoring that can be now found in most flavored



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malt beverages. The regulations will go into effect on January 3, 2006. Whether flavored malt beverages should be taxed as liquor or beer has been a controversial question over the past few years. Federal and state laws treat beer, which is the brewed beverage, and spirits, which is distilled, differently for taxation and distribution purposes. Since flavored malt beverages are made using the fermentation process but had added distilled spirits, alcohol flavoring, the determination as to what category the new product should be categorized under has been unclear. I am introducing this bill to recognize the federal change in the Nebraska statutes and to clarify the standard that the Nebraska Liquor Control Commission must enforce when determining whether a malt beverage is a spirit or a beer. There are other people here to give their viewpoints on this matter, so I'll stop here and start the discussion from someone else, but I would answer any questions anyone would have.

SENATOR FISCHER: Thank you, Senator Janssen. Any questions? Senator Erdman.

SENATOR ERDMAN: Senator Janssen, I don't know if this is the appropriate time or not, but as I was reading the analysis of the bill presented to us by the committee staff, there was reference to an amendment that you may offer? Or is there...?

SENATOR JANSSEN: There could be. Um-hum.

SENATOR ERDMAN: Okay. I should say, that may be offered.

SENATOR JANSSEN: Yeah. Um-hum.

SENATOR ERDMAN: All right, thank you.

SENATOR FISCHER: Other questions? Seeing none, I believe we're ready for our first proponent then on LB 563, please.

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, I'm again appearing on behalf of the Liquor Retailers Association. We support this bill. I think Senator Janssen has pretty well explained the content of it, and if you have any questions, I'd be happy to try to answer them.

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SENATOR FISCHER: Any questions? Thank you, Jim. Next proponent, please.

TERRY MICEK: (Exhibits 14 and 15) Good afternoon, Senator Fischer, Vice Chair of the committee, and other senators on the General Affairs Committee. My name is Terry Micek. The last name is spelled M-i-c-e-k. I work for the Coors Brewing Company in Golden, Colorado, and I'm here to speak for Coors Brewing Company. And I also, if the page could help me...I also would like to suggest an amendment for your consideration and review. And this amendment is the work product of the Beer Institute, which is the national trade association representing the domestic brewers. It has had input from Coors, Anheuser-Busch, and Miller, as well. I'd like to propose in favor of changes as Senator Janssen has spoke, relative to the recent activity that resulted in the federal government looking at products that were known as flavored malt beverages, but in fact had as much as 99 percent or more alcohol in them that was derived by distillation, not by brewing. So the action of this Legislature, I think, is very important because you define distilled spirits to include any beverage that had any distilled spirits in it. The LB 563 responds to that by doing two things. It first acknowledges what the federal government concluded, as noted in reference to the ruling on January 3, announced in the Federal Register, that a malt beverage will now be considered something under what I'll call the majority standard as it regards products that are combined with it. In this case, 51 percent has to be a malt beverage. And so the action of the federal government is to restrict these products down to a level where the majority of the product is a malt beverage. And we certainly support that type of a restriction on what had been known as a flavored malt beverage prior to the rule. The second thing that the amendment does is it tries to bring this definition of malt beverage into the definition of beer. And I point that out because that perhaps has been most of the struggle that the federal government has had to deal with over the last couple of years. And Senator Janssen referred to, and I would like to refer to it for the record: the Federal Register, Volume 70, Number 1, issued January 3, 2005, pages 194-237. That wasn't available in December when the interim study committee held its hearings; it is now. But I'll make two quotes from that and perhaps it will give

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dimension as to why we have purpose in need of making the amendments before you in LB 563. The first was TTB's reliance upon the federal law as it is, which they said provides...and I quote, provides for three separate and distinct categories of alcohol beverages: distilled spirits, wines, and malt beverages. The classification of a product within one of these categories is the most fundamental decision that must be made before the product can be properly labeled or advertised under the act. Close quote. That was on page 215. Further on, on page 228, the TTB's order and ruling reviewed the following, and I quote again: Longstanding federal and state laws that recognize very significant differences between distilled spirits, wine, and beer or malt beverages, for production, tax, labeling, advertising, and distribution purposes. Close quote. Noting that this is the federal review, and they've concluded these products, under a majority standard, shall be beer or malt beverage. So the second point of the amendment that I had circulated tries to deal with the optics of this definition because they do seem complicated. And yet, I think that they are not complicated when you realize the following, and that is, the federal government had to deal with two issues. One is, how do you define a malt beverage, i.e. malt beverage which would be a base of a flavored malt beverage, and how do you define beer, because they are different under the federal law. And I've spoken with your legal counsel. She has copies of the definitions that I just alluded to or made reference to, and they are cited in 27 CFR, Section 710, which defines malt beverage, and 27 CFR, Section 25.11, which defines beer. One of those definitions does not include hops, which your state law does. The amendment, as proposed, simply takes the two federal laws for malt beverage and beer, and combines them so that you'll have one definition that defines beer or malt beverage in the state of Nebraska--somewhat important because the term malt beverage doesn't exist in Chapter 53 in the current liquor control act. This will allow it to have definition and be part of a beer. Flavored malt beverage, which is the last sentence, then accommodates the most recent ruling, and that's the pathway which gives support to the definition requested in the amendment. A couple more short comments, please, and that is, so why change some of the words of your existing definition of the word "beer?" Examples: take out concoction; put in decoction. I've addressed this with counsel. And hopefully

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counsel has taken the notes that won't take up your time here for me to go through, but there are significant changes since the repeal of Prohibition. As an example, a concoction is an assembly or a recipe of all the ingredients. A decoction is actually when you take a third of the malt and you pull it out and you treat it differently, and then you reintroduce it back into the malt. It's a brewing process that didn't exist at the time that they had the original definitions made back in the '30s following Prohibition. The new definition in the proposed amendment talks about with or without hops. And that explains itself when you read the federal law because malt beverages uses hops under the federal law; beer does not. We talk about other malted cereals, and that's an advance in brewing and in agriculture. We use wheats; we make wheat beers now. And we use other grains besides just malted barleys. We also talk about unmalted or prepared cereals, and that is because you can now use corn starches and rices and things that assist the malted barley in producing starches, which are ultimately converted to sugars in the brewing and fermentation process. We also talk about other carbohydrates, which are now used and common in malt beverages and beer because they may contribute to things such as...a good example would be cellulose, which might help the feel of the malt beverage or the beer in your mouth. It also helps lower the cholesterol. But it doesn't produce any starches. And then we also talk about wholesome products suitable for human food consumption, and that's kind of a carry-over from the food and drug laws that talk about things like a flavor. A flavor would be a good example of a wholesome product that is suitable for food consumption, but it is not a food in and of itself. That concludes my testimony. Thank you.

SENATOR FISCHER: Thank you, Terry. Any questions? I guess I'm looking at your amendment, and besides learning a lot about brewing and the ingredients used in there, why do you think we've...maybe you answered this and I just didn't get it...why do you think we need to add and expand the definition here with your amendment compared to what we already have in the bill?

TERRY MICEK: Thank you. Senator Fischer, the LB 563 did two things. It treated flavored malt beverages separately, and then it amended the current definition of beer to have

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it treated like it's a beer. By opening up the definition of beer, which is I think the first time that I can recall you've done it here in Nebraska, what we as brewers are trying to do is give you the state-of-the-art definition of what beer really is, and also allow Nebraska to recognize malt beverages as part of that, in addition to flavored malt beverages.

SENATOR FISCHER: Do you think this bill would have to have a definition of what beer is, at all, in it?

TERRY MICEK: Well, you currently... Yes, because you currently define it...

SENATOR FISCHER: Okay. And you are suggesting this for the definition then?

TERRY MICEK: Yes, which is consistent with the two federal definitions for the same two subject terms.

SENATOR FISCHER: Okay, thank you.

TERRY MICEK: Thank you.

SENATOR FISCHER: Any other questions? Thank you very much.

TERRY MICEK: Thank you.

SENATOR FISCHER: Welcome to Nebraska.

TERRY MICEK: It's my home state.

SENATOR FISCHER: Oh. Do we have other proponents?

HOBERT RUPE: Vice Chair Fischer, members of the commission, my name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission, and you are probably getting sick of seeing me up here today. The commission's position on LB 563 is one of support. That's why I'm here as a proponent. The problem that occurred, once again somewhat similar to the AWOL device, and sometimes technology changes a little faster than the laws do to reflect that. Just in case anybody is not aware of what a flavored malt beverage is, flavored malt beverages would be something like Sky Blue, Mike's Hard Lemonade, the Bacardi Silvers. What

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they are is, they create a malt base, sort of like a beer base. Then you take everything that makes a beer taste and act like a beer out of it, and then you put in whatever you want it to taste like. And Nebraska, the Liquor Control Commission, (inaudible) in every other states, in late 2003, became concerned with this issue when the TTB, at that time, did a study sort of determining where the alcohol in these beverages was coming from. Up until that time Nebraska, like almost every other state, relied on TTB's for its classification. We thought it was a beer that was just produced in a different manner. Well, when it came out that these beverages had anywhere from a very minuscule amount of alcohol being added by distillation up to a preponderance or a majority of it, we became concerned because how do you tax it, because, as you said, and how do you treat it? Nebraska treats, through its licensing structure, different places can sell different types of alcohol depending on how they are licensed. The commission, based upon the information that we had from the TTB, initiated a decision to treat these are distilled spirits. We were going to allow the manufacturers to be considered a beer if they were to give us a certification from their CEO that they contained less than one-half of one percent alcohol from distillation. That's what is commonly called the de minimis standard. That's a standard which is used throughout the industry. I see Senator Fischer has a Diet Coke. There is a minuscule amount of alcohol within that Diet Coke, but it's below the half percent so it's not considered an alcoholic beverage because usually those are used in the food industry as a preservative or a...primarily for a nonalcoholic purpose. Alcohol works as an enhancer; it also works as a preservative. And so that was the position that the commission had taken. We were asked by Senator Janssen, and there was this committee to delay our implementation of that, given the last winter's interim study. That interim study, everybody...nobody knew what TTB was going to do. TTB was looking at it. We all, you know, were casting the tea leaves about, and most people thought they would go differently than they have. Well, now we know what TTB is doing. And the commission's main concern, why they're supporting updating to make our rules...our laws consistent with federal laws is to reduce the amount of market confusion which may result. What will happen is, most of these flavored malt beverages, I'm assuming will comply with the federal guidelines because they will get the benefit of

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the better taxation rate at the local levels and also through the distribution chains. If Nebraska doesn't change our rules and regulation...I mean, our statutes...to reflect that, we're going to be out of sync with the feds, and so it will be coming in flowing in through the beer chain of distribution until it hits Nebraska, in which case then some of the products will be shifted down to the distilled spirits distribution chain. Some may stay in the beer chain depending on how their product...so it will be mass confusion in the marketplace. You would have two very similar products, and if you have a beer-only off-sale license at, say, a C-store, you are not going to which of these Sky Blues you can stock, which one is considered beer and which one might be considered a distilled spirit. And so that is why the commission is in favor of changing it to make us in compliance with federal regulations. I've seen the amendment that has been proposed. I think both the amendment and the existing bill get to the stated end of making us consistent with what the feds are going to do, so I can't really opine on which would be the better route to go in that respect, just so long as the commission just feels that the issue is being addressed and that the confusion that we are fearful of won't take place.

SENATOR FISCHER: Thank you.

HOBERT RUPE: Thank you.

SENATOR FISCHER: Any questions? Senator Erdman.

SENATOR ERDMAN: Thank you, Senator Fischer. Hobie, maybe I'm just reading this right, but as I look at the amendment that is offered, we have the federal definition of malt beverage but we have no definition of beer now because it strikes the current language that we have in our statute and adds the language for a malt beverage, and there's no...the similar language that is found in the federal law on beer is nowhere to be found in this amendment. And so I'm wondering if that is how you read it, or...?

HOBERT RUPE: I was reading it more as a combination of the two from the federal. Besides...

SENATOR ERDMAN: Well, that's how I was trying to read it, but it is not a combination.

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HOBERT RUPE: Yeah. The problem where they are trying to get away from, under the beer or under the federal registry is, the beer contains the de minimis amount, as I spoke of earlier, which would not be able to be in there. Yeah, I'm a little confused to that as well, but the thing is, the malt beverage...a...I think this definition that they are seeking to replace ours would still covers beers is what I'm trying to say. Part of the reason I know why I believe the Beer Institute and perhaps somebody from them can come up and discuss why they are changing it this way, is because a lot of the older beer definitions are somewhat being outdated, giving modern agricultural purposes. An example would be Budweiser. Budweiser uses rice as it (inaudible) part of its fermentation product, and yet if it's...that's why they are called other prepared cereals underneath the proposed definition. That would be my guess is that, as Mr. Micek testified, they are trying to give us what they think is the state-of-the-art definition. If you are going to open up the statute and fiddle with it, you might as well get the state of the art. I'm not sure whether it's necessary, given Nebraska. We haven't had a problem with our beer definition until the flavored malt beverage issue came up because, as spoken, they are sort of a hybrid. They've got entities at both levels of the chain, so.

SENATOR FISCHER: Other questions? Thank you.

HOBERT RUPE: Thank you very much.

SENATOR FISCHER: Other proponents?

MARY CAMPBELL: Vice Chairman Fischer, members of the committee, Mary Campbell, C-a-m-p-b-e-l-l, today representing both the Nebraska Beer Wholesalers Association and the Nebraska Wholesale Liquor Distributors Association. Members of both of those wholesaler groups distribute a wide variety of products in this category called flavored malt beverages, so both have an interest in where we go from here. We've been very fortunate in having the cooperation and the good, hard work of both the commission, committee counsel, your Chairman, all during last session throughout the interim in trying to bring things into compliance as we waited for the TTB to opine and give us guidance and direction on this category of alcoholic beverages. I have a



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bit of a dilemma today in that in January the wholesalers signed off, met in their legislative meetings, took a good, hard look at LB 563, and endorsed it as an approach which they thought would solve the problem, and allow these products to continue to be taxed and distributed as malt beverages. Late last week was the first that I saw a new approach, new language, coming from the Beer Institute and the major manufacturers, the major breweries. And far be it from me to better define the chemistry of the manufacturer of beer. I certainly defer to them. They are the experts. My concerns are, of course, two fold. One, today I don't feel that I have authorization to go with that substitute definition over this bill, and secondly, as with Senator Erdman, I feel like I need time...we all need time to digest what they brought us and see if this is, in fact, a good fit for Nebraska's statutes. It is a major rewrite, a total rewrite of a definition which has stood the test of time in other battles, other questions, for many years. And before I bolt from that to what may be a very fine and up-to-date and appropriate definition, I need time to go back to the membership and also to work with committee counsel, work with the commission, work with the Beer Institute and their members, to make sure that we're going in the right direction here. And so the basic support is certainly for what we are attempting to do, to clarify and put to rest the taxation and distribution questions with these products. But to make sure that we aren't creating any unintended consequences by a wholesale rewrite of Nebraska's definition of beer. And with that, I would take questions.

SENATOR FISCHER: Thank you. Any questions for Mary? Thank you very much.

MARY CAMPBELL: Thank you.

SENATOR FISCHER: Do we have other proponents?

KATHY SIEFKEN: Senator Fischer and members of the committee, my name is Kathy Siefken. That's Kathy with a K, Siefken is S-i-e-f-k-e-n, and I'm here representing the Nebraska Grocery Industry Association. And this is an issue that is very important to us because with the current statutes that we have in Nebraska, the definition of a flavored malt beverage would disrupt the distribution channels and it would affect the taxation of this product.

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These products are very large sellers in some of our grocery stores. As a matter of fact, in some locations it's as high as 12 percent in that category--12 percent of their sales. And so we really don't want to see the distribution channels changed or disrupted. We want them to continue to use the same channels they are using now and we would rather not see the taxes increased on these products because we believe that everyone else across the nation is going to adopt the TTB's guidelines. And, again, we would have border bleed, like we do with other products, if the taxing of these products is so much higher than it would be just across the state lines. For that reason, we worked very hard with all of the parties involved, and I thought we had a consensus. And I thought that we would have no opposition to this bill, so I'm very disappointed that I didn't hear about there being an amendment until today. And so it seems we no longer have a consensus. This is an issue we have all worked on very hard for a long time. And without having seen the amendment, I really don't know what's in it; don't know how it changes any of the things that we've already agreed to. So I would propose that you send this bill out of committee onto the floor as quickly as you can because we're looking at a definition right now that is out of sync and we need to fix it. So with that, if you have any questions, I'd be happy to try to answer them.

SENATOR FISCHER: Questions? Seeing none, thank you, Kathy.

KATHY SIEFKEN: Thank you.

SENATOR FISCHER: Do we have any other proponents for the bill? Anyone wishing to speak in opposition?

DIANE RIIIBE: (Exhibit 16) Like Hobie, I feel like this is kind of the revolving chair. Again, good afternoon, senators. My name is Diane Riibe and I'm the director of Project Extra Mile, and R-i-i-b-e is my last name. We are a network of coalitions across the state working to prevent underage drinking and its tragic consequences. We would urge the committee to not support LB 563 and will provide, we believe, some solid reasons for you to do so. We would also encourage those on the committee who are not perhaps as familiar with flavored malt beverages and the larger implications of this proposal to learn more before making a decision. And I realize before I make my comments that we

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are certainly a lone voice in the wilderness and I acknowledge that up front. Flavored malt beverages provide clear evidence that the industry is committing consumer fraud while marketing to our kids, particularly to our girls. The American Medical Association released results less than 60 days ago of two nationwide polls that reveal the extent of underage consumption and marketing exposure to flavored malt beverages. The AMA expressed concern that hard-liquor brands are using these sweet, flavored malt beverages as as gateway beverages to attract less experienced drinkers. What did the AMA polls show us? Approximately one-third of teen girls report having tried a flavored malt beverage; more teen girls have had a flavored malt beverage in the past six months than teen boys--31 percent versus 19 percent; teen girls report drinking flavored malt beverages more than any other alcoholic drink, whereas adult women age 21 and older ranked it as their least favorite and least-consumed alcoholic beverage. The University of Michigan's Monitoring the Future Study found that in 2004 more than 31 percent of all 12th graders surveyed, and there were nearly 15,000 in the study, reported consuming a flavored malt beverage in the last 30 days. And when looking at those same high school seniors, 71 percent of them reported consuming a flavored malt beverage sometime in their lifetime. Senators, we would submit that this is an alcohol product that was intended for young people, particularly young, underage females. We know that young people are especially sensitive to price, and by keeping the price low on these products, we keep them available to our youngest consumers. In a study released in 2004 by Georgetown University's Center on Alcohol Marketing and Youth, they found that girls ages 12 to 20 saw 95 percent more magazine ads for flavored malt beverages than women over 21--95 percent more. In fact, the research tells us that girls' exposure to those products in magazine ads increased by a whopping 216 percent from 2001 to 2002, while boys' exposure increased by 46 percent during the same time period. As someone recently said to me at a national conference, the flavored malt beverage portion of the market is the industry's greatest experiment on our young people. They first created a product attractive to youth, kept the price relatively low, and marketed and advertised it where it would reach the largest percentage of the market it wanted. And it worked, and it should not be allowed to happen to Nebraska's youth. The most asserted

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reason for making a change to Nebraska's law is that the federal government has moved to a less restrictive standard, and thus, the thinking goes, Nebraska should follow suit. Much to everyone's surprise, perhaps with the exception of Diageo's, the TTB decision was a full-circle change from the TTB's initial proposal. The new federal standard allows for a product not deriving more than 49 percent of its total alcohol content from added flavors containing alcohol obtained by distillation rather than the brewing process, to be considered a malted beverage or a beer rather than a distilled spirit for purposes of federal taxation, labeling, marketing, and distribution. The earlier proposal by the TTB under Notice 4, and I have would have treated, and I quote from the Federal Register in January '05, quote, as distilled spirits product any fermented product that contains one-half of one percent or more alcohol by volume derived from flavors, tax-paid wine, or other ingredients containing alcohol. As a consequence of the proposed new section, those products would be taxed and classified as distilled spirits--one-half of one percent. End quote. What we would like the committee, as well as the public, to know is that Nebraska does not have to follow the decision of the TTB. In fact, in the Federal Register, we learn that not all states are intending to. The Delaware Alcoholic Beverage Control Commissioner stated in a letter to the TTB that, quote, if a national standard for these beverages is established, state legislatures and administrators can make an informed decision as to whether it is in the state's interest to comply with or deviate from the national standard. End quote. We would say that it is not in the state's best interest to follow the national standard. Taxpayers lose tax revenue, and we allow the industry to further target Nebraska children. According to the Liquor Control Commission in a letter to retailers dated October 7, 2003, it determined that, quote, under Nebraska's statutory definitions, a flavored malt beverage should be classified as a spirits and not beer for tax and distribution purposes if more than one-half of one percent of its alcohol content was obtained by distillation. End quote. In fact, commissioners had no choice, they believed in 2003, than to adhere to state law. Doing so would have put flavored malt beverages into a tax rate approximately 12 times the tax on beer. But the commission was persuaded to delay compliance with state law, and in doing so, Nebraska lost millions of dollars in tax revenue. Instead of complying with state

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law, we're here today looking at a proposal to change the law. One wonders why lawmakers would bother to change the state law on this issue since the statute was so easily ignored while the state lost millions in tax revenues. It is also difficult to understand why those who profited from that substantial tax break do not owe back taxes to the taxpayers of Nebraska. Nebraska not only does not have to follow the national standard, but the Liquor Control Commission, on a unanimous decision, even urged the TTB to adopt its initial proposed change of requiring not more than one-half of one percent of the alcohol content of a product to be obtained by distillation. In fact, the TTB recognized in the Federal Register in January of this year, that, quote, some states have already began regulatory proceedings on this issue. The Nebraska Liquor Control Commission commented that it has already determined that FMBs, flavored malt beverages, containing more than one-half of one percent alcohol derived from distillation should be classified as distilled spirits, and has set a deadline for industry compliance with this standard. End quote. In closing, we would urge you, senators, to not support the change in Nebraska statute as proposed in this bill. We ask you to share our concern for doing the best we can as a state to regulate the products that pose greater risk to our children. Keep our state law as it is, recognize flavored malt beverages for what they are--more of a distilled spirit than a beer, and tax them at a rate that is appropriate, legal, and allows the price of those products to be less available to children. Thank you for consideration of our comments.

SENATOR FISCHER: Thank you, Diane. Any questions? Do you have a copy of your testimony?

DIANE RIIBE: I do.

SENATOR FISCHER: Thank you. Seeing none, any other opponents to the bill?

SUSIE DUGAN: (Exhibit 17) Senator Fischer and members of the committee, my name again is Susie Dugan, D-u-g-a-n. I am here representing PRIDE-Omaha, an organization dedicated to preventing the use of alcohol, tobacco, and other drugs by young people. We also are in strong opposition to LB 563 because of what effect it is going to have on our young

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people. We know that the alcopops, as you heard before, or the flavored malt beverages are very popular with young people, and you've got some figures and some surveys in the packet that I have just given you. Young girls especially, do not by nature like the taste of alcohol. That's why wine coolers became one of their principal forms of alcohol use. And now we are seeing a very big rise in the use of the alcopops by our young people, and that includes Nebraska teens. We know that young people are especially price sensitive when it comes to alcohol or tobacco. If we raise the price significantly, use goes down. We can prove that over and over again. And by treating the alcopops or the flavored malt beverages as beer, that price is going to stay low. We know that beer and these types of products are very comparable to soda pop or orange juice when it comes to pricing. There was a study in Switzerland a year ago. They quadrupled the tax on the alcopops because of their grave concern about what it was doing to their young people. And in just one year they have cut consumption by young people in half. And as the Swiss Alcohol Board spokesman said of the tax, it has fulfilled its aim, to slow consumption by young people. So as you are considering this issue, I hope you will deliberate long and slowly on it and consider the young people who are going to be impacted by your decision. And I strongly urge you to oppose the passage of LB 563.

SENATOR FISCHER: Thank you, Susie. Questions? Senator Erdman.

SENATOR ERDMAN: Susie?

SUSIE DUGAN: Yes.

SENATOR ERDMAN: What is the drinking age in Switzerland?

SUSIE DUGAN: I'm not sure about that. It's talking about young people.

SENATOR ERDMAN: And I'm just trying to connect the two, and I didn't ask Diane this so I guess you are the unfortunate one on the seat. It would appear that we have an enforcement problem, not a tax code problem. Because, as I'm sitting here and discussing this with Senator Friend, I'm sure as a young person, whether I'm a female or a male or whatever, if I'm a 16-year-old, standing at the grocery

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story trying to figure out which alcohol beverage to buy, I'm not looking at the price, because I'm probably not the person buying it. If I am, I'm not really worried about what the cost is; I'm worried about being caught. And so I'm trying to figure out how classification actually impacts if the individual is getting the product illegally, because it is illegal to drink those beverages...

SUSIE DUGAN: It is illegal.

SENATOR ERDMAN: ...unless you are in your parents' home, and, you know, that exemption. But I'm trying to draw the connection here and so maybe you can further expound on that.

SUSIE DUGAN: It is. If we're going to really impact youth consumption of alcohol, it has to be a multifaceted, comprehensive approach. Law enforcement is critical, yes. But pricing is also a big variable in the whole picture that we're looking at. If these alcoholic beverages are low in price, they are much more popular with young people.

SENATOR ERDMAN: I guess I would need to see the actual facts to prove that. I think the situation...I've been to Europe; I went to Europe as a college student. I was a freshman in college. The comment that was shared with me was that beer was liquid bread. I mean, that was their...that the affectionate term, I guess, that they gave it, and so I could see how a tax hike or something like that in a community or in a state where it was legal would make more sense, just like if we doubled the tax or doubled the cost of pop in our state. I mean, I can see how that could logically be tied to this, but I guess I would need to see some more facts on exactly how raising the tax of an illegal product affects people's ability to purchase it, and so if you could share that...

SUSIE DUGAN: I'd be happy to get you some of that.

SENATOR ERDMAN: ...that would be great.

SUSIE DUGAN: I certainly would.

SENATOR FISCHER: Other questions? Thank you, Susie.

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SUSIE DUGAN: Thank you.

SENATOR FISCHER: Are there any other opponents to LB 563? Anyone wishing to testify in the neutral capacity? Senator Janssen, would you like to close?

SENATOR JANSSEN: Briefly.

SENATOR FISCHER: Thank you.

SENATOR JANSSEN: Thanks, Senator Fischer. You know, the purpose of this hearing is not to advocate the use of this product. It is just to comply with the federal regulations. And for the committee's information, the alcohol content would be the same as what beer would be. This state has high-test beer. It's not 3.2; I think it is around 4.5 to 5 percent, something like that. So with that, that's my closing and I would answer any questions anybody might have.

SENATOR FISCHER: I don't see any. Thank you very much, Senator.

SENATOR JANSSEN: That'll end the hearings for the day then.

SENATOR FISCHER: With that, we will close the hearings for the day. Thank you all.